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REVISED CODES OF MONTANA

VOLUME 1

Part 1

1969 Cumulative Pocket Supplement

Containing

AMENDMENTS TO PROVISIONS AND NEW PROVISIONS
APPROVED SINCE PUBLICATION OF REPLACEMENT
VOLUME 1 (PART 1) OF THE 1947 REVISED CODES

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1
(PART 1) THROUGH VOLUME 447, PACIFIC
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AND

PARALLEL REFERENCE TABLES SUPPLEMENTING
REPLACEMENT VOLUME 1 (PART 1)

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REVISED CODES OF MONTANA

VOLUME I

Part I

1969 Cumulative Pocket Supplement

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1969

CONSTITUTIONAL AMENDMENTS IN VOLUME 1 (PART 1)

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AMENDMENTS

TO THE

CONSTITUTION OF THE UNITED STATES

AMENDMENT 14

1. * * * [Same as parent volume.]

2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the Legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

3 to 5. * * * [Same as parent volume.]

Compiler's Notes

Section 2 of Amendment 14 is printed above to correct a typographical error in

the parent volume by substituting "excluding" for "including" in the first sentence.

AMENDMENT 23

1. The district constituting the seat of government of the United States shall appoint in such manner as the congress may direct:

A number of electors of president and vice-president equal to the whole number of senators and representatives in congress to which the district would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of president and vice-president, to be electors appointed by a state; and they shall meet in the district and perform such duties as provided by the twelfth article of amendment.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-third amendment was submitted by Congress on June 16, 1960, declared in force April 3, 1961.

CONSTITUTION OF THE UNITED STATES

AMENDMENT 24

1. The right of citizens of the United States to vote in any primary or other election for president or vice-president, for electors for president or vice-president, or for senator or representative in congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

2. The congress shall have power to enforce this article by appropriate legislation.

The twenty-fourth amendment was submitted by Congress on January 10, 1962, declared in force February 4, 1964.

AMENDMENT 25

1. In case of the removal of the president from office or of his death or resignation, the vice-president shall become president.

2. Whenever there is a vacancy in the office of the vice-president, the president shall nominate a vice-president who shall take office upon confirmation by a majority vote of both houses of congress.

3. Whenever the president transmits to the president pro tempore of the senate and the speaker of the house of representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the vice-president as acting president.

4. Whenever the vice-president and a majority of either the principal officers of the executive departments or of such other body as congress may by law provide, transmit to the president pro tempore of the senate and the speaker of the house of representatives their written declaration that the president is unable to discharge the powers and duties of his office, the vice-president shall immediately assume the powers and duties of the office as acting president.

Thereafter, when the president transmits to the president pro tempore of the senate and the speaker of the house of representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the vice-president and a majority of either the principal officers of the executive department or of such other body as congress may by law provide, transmit within four days to the president pro tempore of the senate and the speaker of the house of representatives their written declaration that the president is unable to discharge the powers and duties of his office. Thereupon congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the congress, within twenty-one days after receipt of the latter written declaration, or, if congress is not in session, within twenty-one days after congress is required to assemble, determines by two-thirds vote of both houses that the president is unable to discharge the powers and duties of his office, the vice-president shall continue to discharge the

CONSTITUTION OF THE UNITED STATES

same as acting president; otherwise, the president shall resume the powers and duties of his office.

The twenty-fifth amendment was submitted by Congress on July 7, 1965, declared in force February 23, 1967.

THE ENABLING ACT

§ 1. * * *

References

Spaberg v. Johnson, 143 M 500, 392 P 2d 78.

§ 4. * * *

Crime on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing penalty for trespass to

possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. State v. Danielson, 149 M 438, 427 P 2d 689.

§ 11. That all lands granted by this act shall be disposed of only at public sale after advertising—tillable lands capable of producing agricultural crops for not less than ten dollars (\$10.00) per acre, and lands principally valuable for grazing purposes for not less than five dollars (\$5.00) per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, nonmineral, unreserved public lands of the United States within the state.

Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons, and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective states; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.

The state may also, upon such terms as it may prescribe grant such easements or rights in any of the lands granted by this act, as may be acquired in privately owned lands through proceedings in eminent domain; provided, however, that none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for

ENABLING ACT

the support and maintenance of the public schools and the various state institutions for which the lands have been granted. Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be available for the acquisition and construction of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such schools and institutions. Any state may, however, in its discretion, add a portion of the annual income to the permanent funds.

The lands hereby granted shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted.

NOTE.—This section given as last amended by an act of Congress, June 30, 1967, 81 Stat. at L. 106.

Leasing for Underground Storage

The law authorizing the lease of state

lands for underground storage of natural gas does not violate this section. State ex rel. Hughes v. State Board of Land Commrs., 137 M 510, 353 P 2d 331, 335.

§ 25. * * *

Compiler's Note

A note under this section in the parent volume refers to an act of congress, ch.

183, 62 Stat. at L. 170. The correct date of the act is April 13, 1948, not 1949 as shown in the parent volume.

CONSTITUTION

OF THE

STATE OF MONTANA

ARTICLE III—A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA

Sec. 1.

References

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

Sec. 2.

References

Cited in *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 909, 912.

Sec. 3.

Gasoline Tax Refund

Motorboat operator could not raise due process or equal protection objections to gasoline tax statute making no provision for nonhighway use refund since statute made gasoline dealer taxpayer, rather than consumer, and consumer, as motorboat operator, was not proper representative of all nonhighway users. *Harvey v. Blewett*, 151 M 427, 443 P 2d 902.

Statutes Invalid under This Provision

Sections 3 and 27 of this article serve to inhibit the police power in this state, and chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or

other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax was unconstitutional under these sections. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Chapter 277, Laws of 1965, providing for nonresident contractors' license fees, was invalid under this section since, by imposing a one per cent tax on gross receipts, rather than on profits, it could have deprived contractors of their right to engage in business as protected by the provisions of this section. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

Sec. 4.

Corporate License Tax on Organization of Church Society

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on the agricultural activities of a religious society formed for the purposes of farm-

ing, stock growing, and other branches of agriculture does not conflict with constitutional provisions relating to religious freedom. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

Sec. 6.

References

State ex rel. *Peery v. District Court*,

145 M 287, 400 P 2d 648; *Tooker v. State*, 147 M 207, 410 P 2d 923.

Sec. 7.

Description in Search Warrant

Evidence obtained in a search of defendant's home was properly used to convict the defendant of grand larceny, even though the items seized were not specifically described in the search warrant pursuant to which the search and seizure was conducted. *State v. Gray*, — M —, 447 P 2d 475.

When Rights May Be Waived

Where defendant admitted a sheriff, a deputy sheriff, and two livestock inspectors onto his ranch on three separate occasions to inspect his calves, and helped

them to corral the animals, he waived his constitutional right against unreasonable search and seizure by consenting to the actions of the state authorities. *State v. Peters*, 146 M 188, 405 P 2d 642.

Constitutional rights of defendant convicted of grand larceny of cattle were not violated by evidence of worked-over brands given by witnesses privileged to travel on open range on which defendant had mere nonexclusive license to graze cattle and further evidence obtained while removing cattle in vicinity of defendant's home with defendant's consent. *State v. Johnson*, 149 M 173, 424 P 2d 728.

Sec. 8.

Necessity for Indictment

Charges made by information filed after hearing before magistrate, or by leave of district court are sanctioned by statute and constitution and defendant may be held to answer, even for capital crime, without presentment or indictment by grand jury. *State v. Corliss*, 150 M 40, 430 P 2d 632.

Complaint in a justice court, rather than indictment, was proper on charge of misdemeanor of obtaining money by false pretenses. *Petition of Brown*, 150 M 483, 436 P 2d 693.

Preliminary Hearing

Grant of leave to file information directly, without preliminary hearing, was neither error nor abuse of statutory privilege to bypass preliminary hearing, where motion to file directly was supported by affidavit and where preliminary hearing would have served no purpose. *State v. Johnson*, 149 M 173, 424 P 2d 728.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211; *Petition of Jones*, 146 M 305, 405 P 2d 978; *Petition of Evans*, 146 M 405, 409 P 2d 456; *Tooker v. State*, 147 M 207, 410 P 2d 923.

Sec. 11.

Ex Post Facto Application

A parole and probation statute which had not been in effect at the time prisoner began serving his sentence but was in effect following a new trial in which prisoner was reconvicted and began again serving a ten-year sentence, which had the effect of increasing prisoner's time by allowing less time off for good behavior than did the prior probation law, was ex post facto as to that prisoner. *State ex rel. Nelson v. Ellsworth*, 142 M 14, 380 P 2d 886.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans eligible to receive honorariums did not violate this section. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 918.

The provisions of former section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 35.

Sec. 14.

Acts Not Violating This Provision

The requirements of subsection 9 of section 11-602, R. C. M. 1947, that a portion of platted subdivisions be dedicated to public park purposes are not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. *Billings Properties, Inc.*

v. Yellowstone County, 144 M 25, 394 P 2d 182.

Damages Comprehended by This Provision

Where plaintiff's property was within the announced route of proposed interstate highway and he was therefore unable to sell, lease, develop or finance said property for a period of five years after the announcement, he was allowed no

recovery under this section as no property was actually taken or damaged by the state. *Bakken v. State Highway Commission*, 142 M 166, 382 P 2d 550.

Easement as Property

A ditch is an easement, is property as used in this section, and may not be taken for public purpose without just compensation. *Colarchik v. Watkins*, 144 M 17, 393 P 2d 786.

Just Compensation

In eminent domain proceedings, the jury findings will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided by this section. *State v. Peterson* 134 M 52, 328 P 2d 617, 620.

An owner may testify as to the reasonable value of the property for the general use to which he is putting it, but to go beyond that field, in estimating its worth, he must possess the qualifications required of a general witness as to value. *Alexander v. State Highway Commission*, 142 M 93, 381 P 2d 780, distinguished in 142 M 256, 260, 384 P 2d 770; *State Highway Commission v. Keneally*, 142 M 256, 384 P 2d 770.

Where there was conflicting testimony as to amount of damage to plaintiff's land after condemnation by state of part of that land, jury's finding as to amount of damage for the injury done was not so excessive as to be a violation of this section providing for just compensation. *State Highway Commission v. Biastoch Meats, Inc.*, 145 M 261, 400 P 2d 274.

Sec. 15.

Previously Acquired Rights

Mandamus to compel fish pond licensee, in compliance with later statute, to construct fish ladder on diversion dam installed seven years before with approval of commission would be denied on theory that individuals who have put water to beneficial use should not have their rights arbitrarily diluted under claim of sovereign right. *Paradise Rainbows v. Fish and Game Commission*, 148 M 412, 421 P 2d 717.

Sec. 16.

Competency of Court-appointed Counsel

Failure of court-appointed counsel to object to certain remarks by the prosecutor was not alone sufficient to deprive defendant of due process under this section in the absence of a showing that counsel displayed such a lack of diligence and competence as to reduce the trial to

In eminent domain proceedings the findings of the district court will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided for by this section. *State Highway Commission v. Woodcock*, 147 M 291, 411 P 2d 357.

Where condemnee's house was between fifty and sixty years old and had been converted into a multiple family dwelling, court did not err in excluding evidence of reconstruction costs or comparable sales elsewhere in determining value of the property since there was no way of determining depreciation of the old house in arriving at reconstruction cost figures, nor were there sufficient comparable sales in the area. *State Highway Commission v. Tubbs*, 147 M 296, 411 P 2d 739.

Payment or Tender of Compensation

Where party sued the state for damages and just compensation, the action was treated as any other damage action and on appeal plaintiff could not claim it to be an inverse condemnation action and require the state to pay into court the amount of damages prayed for in the complaint. *State ex rel. State Highway Commission v. District Court*, 142 M 198, 383 P 2d 481.

References

Cited or applied in *Neil v. Lewis and Clark County*, 133 M 323, 323 P 2d 270, 273.

Rights-of-Way of Necessity

There can be implied reservations or implied grants of easement by necessity in Montana. *Thisted v. Country Club Tower Corp.*, 146 M 87, 103, 405 P 2d 432, overruling *Herrin v. Sieben*, 46 M 226, 127 P 323; *Violet v. Martin*, 62 M 335, 205 P 221 and *Simonson v. McDonald*, 131 M 494, 311 P 2d 982, 984.

a "farce or a sham." *State v. Noller*, 142 M 35, 381 P 2d 293.

Perfection of Appeal

Even though supreme court dismissed appeal in criminal case because court-appointed counsel was late in filing notice of appeal, the court considered the ques-

tions presented on appeal because defendant had no voice in the appointment of counsel. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 418.

Presumption of Innocence

Instruction that while mere unexplained possession of stolen property was not sufficient to justify conviction, one found in possession of property that may have been stolen must explain such possession in order to remove effect of that fact as circumstance to be considered with other evidence pointing to guilt, did not deprive defendant of presumption of innocence. *State v. Gray*, — M —, 447 P 2d 475.

Right of Accused To Meet Witnesses against Him Face to Face

The right to confrontation is not an absolute one, and may be circumscribed by the right to take depositions as provided for in section 17, article III of the Montana constitution. *Tooker v. State*, 147 M 207, 410 P 2d 923.

Right To Appear and Defend in Person

A defendant's constitutional and statutory right to be present at trial does not encompass proceedings before the court involving matters of law, but only where the jury is hearing his cause or where his presence is essential to a fair and just determination of a substantial issue. *State v. Peters*, 146 M 188, 405 P 2d 642.

This provision and former section 94-7004, requiring the presence of a defendant at trial, do not require that the defendant be present at a hearing on a

motion for a new trial because such a hearing is held after the verdict has been rendered and is not part of the trial. *State v. Peters*, 146 M 188, 405 P 2d 642.

Right to Introduce Evidence

In a murder prosecution the court properly refused to permit the defendant to introduce the results of a lie-detector test given five and one-half months after the crime to which it referred. *State v. Hollywood*, 138 M 561, 358 P 2d 437, 444.

Right to Speedy Trial

Convicted forger's right to a speedy trial was not violated by delaying the trial until the defendant had been paroled from the state prison. *State v. Mielke*, 148 M 320, 420 P 2d 155, 157.

In determining whether right to speedy trial had been violated for purposes of constitution and statute requiring dismissal of action if not brought to trial within six months after filing of information, court would count only days of delay which had not been caused by defendants, sum total of which was less than six months, notwithstanding that more than six months had passed since filing of information. *State ex rel. Thomas v. District Court, Thirteenth Judicial District*, 151 M 1, 438 P 2d 554.

References

Kuhl v. District Court, 139 M 536, 366 P 2d 347, 362; *State v. Moran*, 142 M 423, 384 P 2d 777; *Petition of Ditton*, 145 M 594, 403 P 2d 205.

Sec. 17.

Right To Confront Witnesses

This provision, allowing for the taking of depositions, does not violate section 16, article III of the Montana constitution, which provides for the right to confrontation, and depositions taken under

authority of this provision are admissible at trial upon a showing that the witness is either dead or not within the jurisdiction. *Tooker v. State*, 147 M 207, 410 P 2d 923.

Sec. 18.

Double or Former Jeopardy

Defendant charged with sale of intoxicating liquor to a minor was not placed in former jeopardy in violation of this section, by a dismissal of the complaint upon his demurrer in justice court without any further proceedings. *State v. Moore*, 138 M 379, 357 P 2d 346, 347.

Where the defendant was charged with twenty-two counts of statutory rape, conviction on one or more of those counts could not be imposed as a bar to a prosecution for any of the other offenses charged, and where they were set forth separately in the information, there was

no violation of state or federal constitutional prohibitions. *State v. Boe*, 143 M 141, 388 P 2d 372.

Imprisonment imposed as a punishment under a valid judgment and sentence in a criminal prosecution places the defendant once in jeopardy within the ambit of this section. In *re Williams' Petition*, 145 M 45, 399 P 2d 732.

Jeopardy, as applied to double punishment in the constitutional sense, requires punishment imposed as such and for that purpose and has no application to probatory rules placing reasonable restraints on a person's actions and conduct for the

purpose of his rehabilitation. In re Williams' Petition, 145 M 45, 399 P 2d 732.

Information in five counts, three of which alleged larceny of more than one cow, did not violate former jeopardy provision in that each count stated separate offense under grand larceny statute making theft of each animal separate and distinct offense and in view of further statute permitting information to charge more than one offense in separate counts. State v. Johnson, 149 M 173, 424 P 2d 728.

Sec. 19.

Amount of Bail

The amount of bail which the judge may fix is within his sound legal discretion, and is always to be a reasonable amount. State v. McLeod, 131 M 478, 311 P 2d 400, 407.

The trial judge in determining the amount of bail to be fixed, should take into consideration the enormity of the crime charged; the maximum penalty which the law authorizes; the pecuniary condition of the defendant; the probability of the defendant's flight to avoid punishment; his general character and reputation; the apparent nature and strength of

Statute providing for a penalty of \$1,000 for any excess freight weight over 25,000 pounds is penalty in addition to other penalties provided by statute and violates neither double jeopardy provision of Constitution nor statute providing that when action is punishable under different provisions of Code, punishment may be had under only one of them. State ex rel. Olsson v. District Court, Eleventh Judicial District, 151 M 12, 438 P 2d 560.

the proof as bearing upon the probability of his conviction; and other matters bearing upon the particular case. State v. McLeod, 131 M 478, 311 P 2d 400, 407.

Court did not err in refusing defendant's motion to reduce bail which was initially set at \$25,000, where the person assaulted was in a very precarious condition and it was not known whether he would live or die. When the judge was advised that the victim would probably live, he reduced the bail to \$7,500 which was a very reasonable amount. State v. McLeod, 131 M 478, 311 P 2d 400, 407, 408.

Sec. 20.

Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. 2, before the 1955 amendment) did not violate this section. State ex rel. Hardy v. State Board of Equalization, 133 M 43, 319 P 2d 1061, 1063.

Sec. 23.

Declaratory Judgment

A party has a right to a jury trial on demand where the suit is for a declaratory judgment and there are triable issues of fact. Mahan v. Hardland, 147 M 78, 410 P 2d 156.

Deliberations of Jury

Trial court did not err in denying plaintiff's motion for a new trial, on the ground of misconduct of the jury during its deliberations, supported by affidavits of four jurors indicating that the irregularity was not on a material matter in dispute, where plaintiff was probably not prejudiced by juror's misconduct in improperly referring to prior litigation in

which plaintiff had been involved, the poll of the jury showing an eight to four verdict for the plaintiff. Schmoeyer v. Bourdeau, 148 M 340, 420 P 2d 316, 317.

When the jury retires to the jury room it should be concerned only with the evidence and the law; the verdict, thus, is the result of a fair expression of opinion by all the jurors. Schmoeyer v. Bourdeau, 148 M 340, 420 P 2d 316, 317.

References

Cited or applied in Application of Bansbach, 133 M 312, 323 P 2d 1112, 1113; Seibel v. Byers, 136 M 39, 344 P 2d 129, 139.

Sec. 24.

Penalty Assessment on Forfeited Bail and Fines

In so far as statute provided for penalty assessment on forfeited bail and on fines, it was void as violation of consti-

tutional provision that laws for punishment of crime should be founded on principles of reformation and prevention. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

Sec. 27.

Arbitrary Exercise of Licensing Power

The arrest of a person for operating a dry cleaning call office within the city without a license, where city's licensing ordinance did not cover such a business, violated the provisions against the taking of property without due process of law. State ex rel. Willumsen v. City of Butte, 135 M 350, 340 P 2d 535.

Criminal Appeals

Dismissal of a criminal appeal for failure to file timely notice of appeal is not a denial of due process, even though the failure was that of court-appointed counsel in whose appointment defendant had no voice. State v. Frodsham, 139 M 222, 362 P 2d 413, 419.

Destruction of Property Without a Trial or Hearing

Proceedings for the destruction of property in many cases must necessarily be summary and without a previous trial or hearing in such cases, and such proceedings are due process. Ruona v. City of Billings, 136 M 554, 323 P 2d 29, 31.

Fundamental Rights

"Due process of law" refers to and means certain fundamental rights which our system of jurisprudence has always recognized, that is, of requiring notice to be given and a hearing had before the property may be taken, or impressed with a lien, giving to the owner thereof these constitutional prerogatives. Great Northern Railway Co. v. Roosevelt County, 134 M 355, 332 P 2d 501, 505, distinguished in 138 M 69, 354 P 2d 1056, 1058.

Gasoline Tax Refund

Motorboat operator could not raise due process or equal protection objections to gasoline tax statute making no provision for nonhighway use refund since statute made gasoline dealer taxpayer, rather than consumer, and consumer, as motorboat operator, was not proper representative of all nonhighway users. Harvey v. Blewett, 151 M 427, 443 P 2d 902.

Hearings by Public Service Commission

Where audit had been requested in utility rate increase case by opponents of increase, both sides were given ample time to present evidence and cross-examine witnesses, opponents were permitted to go into utility books with expert witnesses, and the public service commission hired independent rate experts, opponents were not denied a full and fair hearing because of posthearing audit made by the employees of the commission. Cascade County Consumers Assn. v. Public Serv-

ice Commission, 144 M 169, 394 P 2d 856, 869. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

Although section 70-104 authorizes an informal hearing by public service commission in proceedings to set aside rate increases, fundamentals of fair hearing were denied parties opposing rate increase when a hearing was held by the public service commission when the opponents were not present, and when the testimony of that hearing was not spread on the record. Cascade County Consumers Assn. v. Public Service Commission, 144 M 169, 394 P 2d 856, 864. (Dissenting opinion, 144 M 169, 394 P 2d 856, 875.)

Insanity Determination

Commitment of patient to state hospital in civil proceeding, without a jury trial or benefit of counsel in face of protest to jurisdiction of judge on basis that he had previously sentenced patient to five-year prison sentence did not constitute violation of due process since patient had neither mentioned nor requested counsel or jury trial at time of hearing and since determination of sanity question was made by medical jurors and not by judge. Petition of Brown, 151 M 440, 444 P 2d 304.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums did not violate this section. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 918.

The former health district law (69-801 et seq.) does not violate this section. Bacus v. Lake County, 138 M 69, 354 P 2d 1056, 1058.

Milk Control Act

The price-fixing provisions of the Milk Control Act (27-401 et seq.) withstand the due process test. Montana Milk Control Board v. Rehberg, 141 M 149, 376 P 2d 508, 514.

Municipal Ordinances

A city ordinance which imposed a storm sewer service charge applicable to premises within the city limits did not violate this section. City of Billings v. Nore, 148 M 96, 417 P 2d 458, 465.

Penalty Assessment on Bail

Statute providing for penalty assessment on bail violated due process clause in that assessment amounted to tax on right to bail, revenue being earmarked for high school driver education. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

Right to Engage in Business

In Montana, every person has a right to operate a business, subject to the applicable laws of the state and ordinances of the city, and he may not be deprived of such property right without due process of law as guaranteed by this provision. *State ex rel. Bennett v. Stow*, 144 M 599, 399 P 2d 221.

Rural Fire Districts Law

Rural fire districts law, section 11-2008, before 1957 amendment, was unconstitutional as being in direct conflict with this section. *Great Northern Railway Co. v. Roosevelt County*, 134 M 355, 332 P 2d 501, 502, 505, 506, distinguished in 138 M 69, 354 P 2d 1058.

Statutes and Proceedings Held Valid Under This Provision

A city, the chief of police, and police officers were not liable to a dog owner for damages, where the owner's dog was killed by officers acting under an emergency quarantine measure which was passed to meet a threatening situation involving rabies. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29.

A rule made by a board of health which has a relation to securing protection from bites of animals which may be rabid is a proper exercise of its functions, and determination of the means of meeting a threatening situation has been vested in the board of health, and not in the courts. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Sections 3 and 27 of this article serve to inhibit the police power in this state, and chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax was unconstitutional under these sections. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Where developers of trailer park had complied with state and city ordinances and had been granted a state license to operate the park, denial of a license by the city council for matters not contained in, nor required to be observed by the city health ordinance, thereby applying a

different standard than that applied to others engaged in the same line of business, deprived developers of a property right without due process. *State ex rel. Bennett v. Stow*, 144 M 599, 399 P 2d 221.

Act providing for nonresident contractor's license fee (chapter 277, Laws of 1965), imposing a tax of one per cent of gross receipts in addition to a \$25 license fee, was arbitrary and unreasonably discriminatory in that it taxed on the basis of gross receipts rather than on profits. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

Where several jury members read newspaper article in jury room that defendant had pleaded guilty to a manslaughter charge arising out of the same events upon which the present suit for damages was brought, even though it was uncertain whether prejudicial or not and not read until after the verdict was rendered but before damages were established, error was inherently prejudicial and new trial was ordered. *Putro v. Baker*, 147 M 139, 410 P 2d 717.

Sufficiency of Evidence

Where medical testimony pertaining to defendant's antisocial nature and difficulty in controlling his sexual impulses may have established the defendant as a sexual deviate who should be confined for the protection of society, but was not sufficient to sustain the charge of attempting to commit a lewd and lascivious act upon a child, it was reversible error to convict the defendant of the felony. *State v. Green*, 143 M 234, 388 P 2d 362.

Tax Penalty

The double penalty provided for in the income tax statute (84-4924, subd. (2), before the 1955 amendment) did not violate this section. *State ex rel. Hardy v. State Board of Equalization*, 133 M 43, 319 P 2d 1061, 1064.

References

Cited in *State ex rel. Burns v. City of Livingston*, 144 M 248, 395 P 2d 971, 973; *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

Supp 274, 279; *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 653; *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912; *Seibel v. Byers*, 136 M 39, 344 P 2d 129, 139; *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 801, 78 ALR 2d 1012; *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556; *State ex rel. Steen v. Murray*, 144 M 61, 394 P 2d 761, 763.

Sec. 29.

Taxation

The "unless" clause of this section operates in the area of taxation and Art. XII, section 1a, authorizing an income tax, is merely permissive. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

References

Cited in *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F

ARTICLE IV—DISTRIBUTION OF POWERS

Sec. 1.

Counties

Counties are administrative or executive bodies of the state and the same rules apply as apply to any state agency in so far as this section is concerned. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1024.

Delegation of Powers by the Legislature

Former section 69-809 and the provisions of former section 69-813, relating to rules and regulations by health districts, violate this section by delegating legislative power to a board. *Bacus v. Lake County*, 138 M 69, 354 P 2d 1056, 1063.

Chapter 41 of Title 16, giving the county commissioners power to establish zoning districts and to create a commission, contains sufficient guidelines so that it is not an invalid delegation of legislative powers. *City of Missoula v. Missoula County*, 139 M 256, 362 P 2d 539, 542, explained in 362 P 2d 1021, 1023; *Doull v. Wohlschlager*, 139 M 274, 362 P 2d 542, 543.

The provisions of section 11-3801 et seq., granting zoning powers to city-

county planning boards and to county commissioners, are invalid as an unauthorized delegation of legislative power to counties. *Plath v. Hi-Ball Contractors, Inc.*, 139 M 263, 362 P 2d 1021, 1025.

Statutes Held Not To Violate This Provision

Section 93-901, dealing with disqualification of judges, does not violate the separation of powers provision of this section in that it does not impinge upon the existence or supremacy of the judicial system nor alter its jurisdiction or duties, but is a reasonable manner of providing a fair trial for all litigants. *State ex rel. Peery v. District Court*, 145 M 287, 400 P 2d 648.

References

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dissenting opinion); *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912; *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

ARTICLE V—LEGISLATIVE DEPARTMENT

Sec. 1.

References

Cited or applied in *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 32 (dis-

senting opinion); *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 912.

Sec. 4.

Repeal

This section was repealed by Ch. 273, Laws 1965, adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Constitutionality

The portion of this provision which

states that "there shall be no more than one senator from each county" is void and unconstitutional in that it violates the equal protection clause of the fourteenth amendment of the constitution of the United States. *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

Sec. 5.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 10.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 11.

References

State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 939.

Sec. 18.**Removal of State Officer**

The provisions of section 59-405, that where the term of office is not fixed by law the office is held at the pleasure of

the appointing power, do not violate this section. *State ex rel. MacGilvra v. District Court of the First Judicial District*, 148 M 182, 418 P 2d 874, 876.

Sec. 20.**References**

Cited in *Morgan v. Murray*, 134 M 92, 328 P 2d 644, 654.

Sec. 22.**Cross-References**

Printing defined, sec. 19-103.1.

Sec. 23.**Acts Not Violating this Provision**

Laws of 1955, chapter 204, amending section 84-4502 and carrying a title which is practically identical with the heading of this section as stated in the 1947 Codes and properly including additional requirements for bringing actions to recover taxes paid under protest, does not violate this constitutional provision. *Van Tighem v. Linnane*, 136 M 547, 349 P 2d 569, 571.

The title of the County Water District Act (16-4501 to 16-4534) does not violate this section. *Parker v. County of Yellowstone*, 140 M 538, 374 P 2d 328, 334.

Effect of Subsequent Codification on Defect

Section 91-4321 as it is now written was enacted in 1943, and was carried forward in our Codes of 1947 without change. The 1947 Codes were regularly adopted by the legislature with this act incorporated

therein without reference to its original title. Any defect in title was cured by its adoption into the 1947 Code. *State v. Rice*, 134 M 265, 329 P 2d 451, 453.

Initiative Measure Unconstitutional

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, containing more than one subject, violated this section. *State ex rel. Steen v. Murray*, 144 M 61, 394 P 2d 761, 764.

Penalty Assessment on Bail

In so far as statute provided for penalty assessment on forfeited bail and on fines it was void as a violation of the constitutional provision that no bill shall be passed containing more than one subject which shall be clearly expressed in its title. *State ex rel. Sanders v. City of Butte*, 151 M 171, 441 P 2d 190.

Sec. 24.**References**

State ex rel. Easbey v. Highway Patrol Board, 140 M 383, 372 P 2d 930, 939.

Sec. 26.**Divorce Proceedings**

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. *Trudgen v. Trudgen*, 134 M 174, 329 P 2d 225, 232.

Interest on Retail Installment Sales Contracts

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to the Mon-

tana Retail Installment Sales Act, section 74-608 was 16.3%, which exceeded the maximum rate of 10% permitted by section 47-125 and constituted a special law regulating the rate of interest on money, proscribed by this section, the federal court applied the abstention doctrine and postponed further action until the issue was determined by the supreme court of Montana. *B-W Acceptance Corp. v. Torgerson*, 234 F Supp 214, 216.

Operation and Effect in General

Chapter 34, Laws of 1957 (43-709 to 43-715), creating the legislative council, does not violate this section. *State ex rel.*

James v. Aronson, 132 M 120, 314 P 2d 849, overruling State ex rel. Mitchell v. Holmes, 128 M 275, 274 P 2d 611.

Special or Local Laws Forbidden

(Deduction of workmen's compensation benefits in determining retirement pay of public employee.) The provision in section 68-901, subd. (h), requiring the deduction of workmen's compensation benefits in determining the retirement pay of a public employee who is receiving workmen's

compensation for a total disability is unconstitutional as discriminatory in treating totally disabled employees less favorably than those only partially disabled. State ex rel. Morgan v. White, 136 M 470, 348 P 2d 991.

References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Sec. 29.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocating

utility facilities, do not violate this section. Jones v. Burns, 138 M 268, 357 P 2d 22, 35.

Sec. 30.

Cross-References

Printing defined, sec. 19-103.1.

Sec. 32.

Construction

This section refers to the raising of money for defraying the expenses of the general government. Morgan v. Murray, 134 M 92, 328 P 2d 644, 648.

License Tax

Bills imposing tax or license fee to enforce policing regulation are not revenue raising measures. Morgan v. Murray, 134 M 92, 328 P 2d 644, 648.

Local Taxes

Laws delegating authority to local governmental units to levy and collect taxes

for local purposes are not bills for "raising revenue" within the meaning of this section. Morgan v. Murray, 134 M 92, 328 P 2d 644, 649.

Operation and Effect

Chapter 197, Laws of 1957, authorizing indebtedness to be incurred by state for construction of educational facilities is illegal, unconstitutional and void, for the reason that it was a revenue bill which originated in the senate, contrary to the interdiction of this section. Morgan v. Murray, 134 M 92, 328 P 2d 644, 654.

Sec. 34.

Laws Not Violating This Provision

Statute amending initiative act providing for honorarium for World War II veterans so as to make Korean veterans

eligible to receive honorariums did not violate this section. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 920.

Sec. 35.

Laws Violating This Provision

An appropriation made to pay for secretarial services of two private veterans' organizations maintaining service offices in Fort Harrison, Montana, which were not under the control of the state, was

prohibited by this section even though the legislation was for a public purpose. Veterans' Welfare Commission v. Department of Montana, Veterans of Foreign Wars, 141 M 500, 379 P 2d 107.

Sec. 36.

Laws Not Violating This Provision

Section 27 of the County Water District Act (16-4527) does not violate this section by delegating to a corporation the power to tax for the general health, safety, and welfare of property owners without regard to benefits to the property so

taxed. Parker v. County of Yellowstone, 140 M 538, 374 P 2d 328, 331.

The price-fixing provisions of the Milk Control Act (sections 27-401 (k), 27-405 (2), 27-407, 27-416) do not violate the provisions of this section. Montana Milk Control Board v. Rehberg, 141 M 149, 376 P 2d 508, 515, 516.

Sec. 39.**Relocation of Utilities**

The provisions of former section 32-1625, relating to the costs of relocating utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 36.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366; *United States v. Christensen*, 218 F Supp 722, 729.

Sec. 40.**Constitutional Amendments**

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as

passed by the house and senate for the governor's approval or disapproval. *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556.

Sec. 45.**Repeal**

This section was repealed by Ch. 273, Laws 1965, adopted at the general election

of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Sec. 46. The legislative assembly in order to insure continuity of state and local governmental operations in a period of emergency resulting from a disaster caused by enemy attack may enact laws:

(1) To provide for prompt and temporary succession to the powers and duties of elected and appointed public officers who are killed or incapacitated.

(2) To adopt other measures that may be necessary to insure the continuity of governmental operations.

Such laws shall be effective only during the emergency that affects a particular office or governmental operation, and such laws may deviate from other provisions of the Montana constitution, including but not limited to the following sections:

- (1) Section 3, Article X, seat of state government.
- (2) Section 2, Article XVI, seat of county governments.
- (3) Section 16, Article VII, succession to governor.
- (4) Section 4, Article XVI, vacancy on board of county commissioners.
- (5) Section 6, Article XVI, other vacancies in county government.
- (6) Section 45, Article V, vacancies in legislative assembly.
- (7) Section 11, Article VII, special legislative sessions.
- (8) Section 5, Article V, length of legislative session.
- (9) Section 10, Article V, quorum to do business in each house.
- (10) Section 6, Article XIX, location of county offices.
- (11) Section 1, Article VII, duties of executive officers of state.
- (12) Section 7, Article VII, appointments by governor.

Compiler's Notes

This constitutes the new section added to the constitution by act approved March 9, 1965 (Ch. 243, Laws 1965), adopted at

the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

ARTICLE VI—APPORTIONMENT AND REPRESENTATION

Sec. 1.

Reapportionment

Congressional districting under chapter 44 of the Laws of 1917 (43-107) was unconstitutional where legislature had failed in three successive sessions following the

1960 census to redistrict and where the two districts then existing showed a disparity in population of 126,332 persons. *Roberts v. Babcock*, 246 F Supp 396.

Sec. 2. (1) The senate and house of representatives of the legislative assembly each shall be apportioned on the basis of population.

(2) The legislative assembly following each census made by the authority of the United States, shall revise and adjust the apportionment for representatives and senators on the basis of such census.

(3) At such time as the constitution of the United States is amended or interpreted to permit apportionment of one house of a state legislative assembly on factors other than population, the senate of the legislative assembly shall be apportioned on the basis of one senator for each county.

Compiler's Notes

This constitutes sec. 2 of article VI as amended by act approved March 9, 1965 (Ch. 273, Laws 1965), adopted at the general election of November 8, 1966, effective under governor's proclamation, December 6, 1966. The amendment added paragraphs (1) and (3) and eliminated a provision for a state census.

sessions following the 1960 census in conformity with this provision and districts under chapter 44 of the Laws of 1917 (43-107) had a disparity in population of 126,332, governor and secretary of state were enjoined from proclaiming, certifying or conducting election of members of the house of representatives and court established new districts for future elections. *Roberts v. Babcock*, 246 F Supp 396.

Reapportionment

Where legislature failed to reapportion congressional districts in three successive

Sec. 3. Senatorial and representative districts may be altered from time to time as public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the districts as compact as may be.

Compiler's Notes

This constitutes sec. 3 of article VI as amended by act approved March 9, 1965 (Ch. 273, Laws 1965), adopted at the general election of November 8, 1966, effective under governor's proclamation,

December 6, 1966. The amendment made the section applicable to senatorial districts and eliminated a provision prohibiting the division of counties in the formation of representative districts.

DECISIONS UNDER FORMER PROVISIONS

Reapportionment

The provision of this section that "no county shall be divided in the formation of representative districts" was valid since it did not conflict with the equal protec-

tion clause of the fourteenth amendment of the constitution of the United States. *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

Secs. 4 to 6.

Repeal

These sections were repealed by Ch. 273, Laws 1965, adopted at the general

election of November 8, 1966, effective under governor's proclamation, December 6, 1966.

Constitutionality

Sections 4 and 5 are void and unconstitutional in that they violate the equal protection clause of the fourteenth

amendment of the constitution of the United States. *Herweg v. Thirty Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

ARTICLE VII—EXECUTIVE DEPARTMENT

Sec. 1.

Cross-References

Section 46, Article V would permit deviation from this section under emergency conditions.

References

Cited or applied in *State v. Rother*, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion); *State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 931.

Sec. 7.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 9.

Parole

The board of pardons has no power to pardon or commute a sentence, and when it grants a parole, the effect is not to

extinguish the sentence but merely to change the conditions of custody. *State ex rel. Herman v. Powell*, 139 M 583, 367 P 2d 553, 556.

Sec. 11.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 12.

Constitutional Amendments

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as

passed by the house and senate for the governor's approval or disapproval. *State ex rel. Livingstone v. Murray*, 137 M 557, 354 P 2d 552, 556.

Sec. 15.

Casting Deciding Vote

The lieutenant governor of Montana, while presiding as president of the senate, possessed the requisite power to enable or entitle him to cast the deciding vote on third reading of House Bill No. 342, as amended [1961 amendment of section 31-135], at a time when the senators then present and voting were equally di-

vided. *State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

References

Cited or applied in *State v. Rother*, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

Sec. 16.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 20.

References

Cited or applied in *State v. Rother*, 130 M 357, 303 P 2d 393 at 401 (dissenting opinion).

Proposed Amendment

Chapter 1 of the extraordinary session, Laws 1969 proposes to add a new section to read as follows:

"Section —. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department of state government and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of the state, attorney general, state treasurer, state auditor, and superintendent of

public instruction, shall be allocated by law among and within not more than twenty (20) departments by no later than July 1, 1973. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections, or units in such

manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a principal department."

ARTICLE VIII—JUDICIAL DEPARTMENTS

Sec. 1.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211; State v. Frodsham, 139 M 222, 362 P 2d 413, 416; State ex

rel. Peery v. District Court, 145 M 287, 400 P 2d 648; State ex rel. Johnson v. District Court, 147 M 263, 410 P 2d 933.

Sec. 2.

References

State v. Frodsham, 139 M 222, 362 P 2d 413, 416; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1; State ex rel.

Peery v. District Court, 145 M 287, 400 P 2d 648; State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Sec. 3.

District Court Jurisdiction

District judge sitting for disqualified district judge could not review validity and merits of orders entered by disqualified judge since review amounted to attempt to exercise appellate jurisdiction in violation of constitution. State ex rel. State Highway Commission v. Kinman, 150 M 12, 430 P 2d 110.

Exclusive Power

The constitution vests in the courts the exclusive power to construe and interpret legislative acts, as well as provisions of the constitution. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 913.

Scope of Power to Issue Writs in General

Even if a stay, in a case where a writ of

mandate is issued by a district court to compel the issuance of a license, is not provided for in the code, still the supreme court has power under this section to issue a supersedeas, or other appropriate writ, to effectuate its appellate jurisdiction, thus to insure the aggrieved board an appeal that otherwise might be of no value. Gill v. Rafn, 133 M 505, 326 P 2d 974, distinguished in 136 M 453, 456, 348 P 2d 797, 799.

References

State v. Frodsham, 139 M 222, 362 P 2d 413, 416; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1; State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648; State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

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District Court Jurisdiction

District judge sitting for disqualified district judge could not review validity and merits of orders entered by disqualified judge since review amounted to attempt to exercise appellate jurisdiction in violation of constitution. State ex rel. State Highway Commission v. Kinman, 150 M 12, 430 P 2d 110.

Divorce Proceedings

Proceedings for divorce undoubtedly are statutory, but jurisdiction in matters of divorce is constitutional and may not be abridged. Trudgen v. Trudgen, 134 M 174, 329 P 2d 225, 232.

Postconviction Relief

District court has the jurisdiction to consider petition from inmates of state prison for postconviction relief if inmate was sent to prison from judicial district in which petition is filed. Gransberry v. State, 149 M 158, 423 P 2d 853.

Prohibition—Ministerial Function

This section does not give the district courts the jurisdiction to issue a writ of prohibition to control the discretion of an administrative body in carrying out a ministerial function. State ex rel. Lee v. Montana Livestock Sanitary Board, 135 M 202, 339 P 2d 487.

References

Cited or applied in *Hustad v. Reed*, 133 M 211, 321 P 2d 1083, 1092; *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38; *State ex rel. Glacier General Assurance Co. v. District Court*, 143 M 569, 393 P 2d 54;

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648; *Petition of Kelly*, 146 M 484, 408 P 2d 478; *State ex rel. Johnson v. District Court*, 147 M 263, 410 P 2d 933.

Sec. 12.**References**

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38; *State ex rel.*

Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 13.**References**

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 14.**References**

Cited or applied in *Deich v. Deich*, 136 M 566, 323 P 2d 35, 38.

Sec. 15.**Notice of Appeal**

Even though the supreme court dismissed an appeal in a criminal case because of failure to file timely notice of appeal, the court considered the questions raised, where the fault was that of court-appointed counsel in whose appointment

defendant had no voice. *State v. Frodsham*, 139 M 222, 362 P 2d 413, 418.

References

Cited in *Gill v. Rafn*, 133 M 505, 326 P 2d 974; *Rambur v. Diehl Lumber Co.*, 143 M 432, 391 P 2d 1.

Sec. 16.**References**

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 17.**References**

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 19. There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be four years, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

Compiler's Note

This constitutes sec. 19 of article VIII as amended by act approved March 6, 1961 (Ch. 164, Laws 1961), adopted at the general election of November, 1962.

This amendment increased the county attorneys' term of office from two to four years and eliminated a provision applicable only to the first county attorneys elected under the Constitution.

Sec. 21.

Penalty Assessments on Fines

Statute providing penalty assessments in addition to statutory fines was void for indirectly enlarging jurisdiction of justice and police courts in terms of maximum fine which may be imposed for offense

charged. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

References

State ex rel. Johnson v. District Court, 147 M 263, 410 P 2d 933.

Sec. 24.

References

City of Bozeman v. Ramsey, 139 M 148, 362 P 2d 206, 211.

Sec. 26.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Sec. 28.

References

Cited or applied in First Nat. Bank of

White Sulphur Springs v. Stoyanoff, 137 M 20, 349 P 2d 1016, 1020.

Sec. 29. The justices of the supreme court and the judges of the district courts shall each be paid quarterly by the state, a salary, which shall not be diminished during the terms for which they shall have been respectively elected.

Compiler's Note

This constitutes sec. 29 of article VIII as amended by act approved February 27, 1963 (Ch. 92, Laws 1963), adopted at the general election of November 3, 1964.

This amendment eliminated a provision prohibiting salary increases during terms for which elected, and it also deleted a sentence setting the salaries of the first justices and judges.

ARTICLE IX—RIGHTS OF SUFFRAGE AND QUALIFICATIONS
TO HOLD OFFICE

Sec. 2.

Proposed Amendment

Chapter 14, Laws 1969, proposes to amend this section to read as follows:

"Section 2. Every person of the age of nineteen (19) years or over, possessing the following qualifications, shall be entitled to vote at all general elections and for all officers that now are, or hereafter may be, elective by the people, and, except as hereinafter provided, upon all questions which may be submitted to the vote of the people or electors: First, he shall be a citizen of the United States; second, he shall have resided in this state one year immediately preceding the election at which he offers to vote, and in the town, county or precinct such time as may be prescribed by law. If the question submitted concerns the creation of any levy, debt or liability the person, in addition to possessing the qualifications above mentioned, must also be a taxpayer whose name appears upon the last preceding

completed assessment roll, in order to entitle him to vote upon such question. Provided, first, that no person convicted of felony shall have the right to vote unless he has been pardoned or restored to citizenship by the governor: provided, second, that nothing herein contained shall be construed to deprive any person of the right to vote who has such right at the time of the adoption of this constitution; provided, that after the expiration of five years from the time of the adoption of this constitution, no person except citizens of the United States shall have the right to vote."

Operation and Effect

This section, in adding the property holding qualification to voting on debts or liabilities, confined the additional qualification to only those debts or liabilities which look to ad valorem taxes for their retirement. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 915.

This section amended the words "debt or liability" as they appear in section 2, article XIII of the Montana Constitution, and has effectively confined them to debts

or liabilities which must be retired out of ad valorem taxes. *Cottingham v. State Board of Examiners*, 134 M 1, 328 P 2d 907, 916.

ARTICLE X—STATE INSTITUTIONS AND PUBLIC BUILDINGS

Sec. 3.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 5.

Indigent Support

Under constitutional provision defining indigency and statute imposing duty upon county to pay for medical aid rendered indigents, fact that supposed indigent had never supported herself and apparently never would was proof of medical indi-

gency in spite of fact she was employable and notwithstanding absence of evidence of reasons for her inability to be productive citizen. *Montana Deaconess Hospital v. Lewis and Clark County*, 149 M 206, 425 P 2d 316.

ARTICLE XI—EDUCATION

Sec. 1.

References

Cited in *State ex rel. Ronish v. School*

Dist. No. 1, 136 M 453, 348 P 2d 797, 800, 78 ALR 2d 1012.

Sec. 7.

Operation and Effect

The use of the term "all" is not to be taken in its universal and omnibus sense; rather, it was meant to be limited and qualified to conform to good reason to carry out the other purposes of the constitution such as to have a general, uniform and thorough system of public schools. *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 78 ALR 1012.

A reasonable interpretation of constitutional and statutory provisions specifying that school shall be open to children be-

tween the ages of 6 and 21 years, read again in connection with other provisions requiring a thorough education, is that a child must be allowed to enter the first grade sometime during his seventh year, after reaching his sixth birthday. Each local school district has the power to admit children into the first grade who are not yet 6 years of age and each school district may establish a "cut-off" date governing entry into the first grade. *State ex rel. Ronish v. School Dist. No. 1*, 136 M 453, 348 P 2d 797, 78 ALR 2d 1012.

Sec. 11.

Delegation of Powers

The legislature in sections 75-107 and 75-403 R. C. M. 1947, has restricted the board of education in delegation of its powers and this precludes college officials

from contracting with teachers and instructors on behalf of the board. *Brown v. State Board of Education*, 142 M 547, 385 P 2d 643.

Sec. 12.

References

In *re Montana Trust and Legacy Fund*, 143 M 218, 388 P 2d 366.

ARTICLE XII—REVENUE AND TAXATION

Sec. 1.

Construction with Other Sections

This section and section 11 of article XII of the Montana constitution must be

construed together with section 15, which refers specifically to the state board of equalization. *Yellowstone Pipe Line Co.*

v. State Board of Equalization, 138 M 603, 358 P 2d 55, 66.

License Tax—Purposes for Which License Tax May Be Levied

It was not the intention in authorizing the legislature to impose a license fee, to differentiate between the license tax, so-called, and the license fee extracted in regulatory matters, but rather to refer the general subject of licenses to the legislature. *Montana Milk Control Board v. Maier*, 140 M 38, 367 P 2d 305, 306.

Statutes Held Invalid under This Provision

Chapter 153 of the session laws of Montana, 1961, which discriminatorily re-

strained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax, was unconstitutional under this section. *Garden Spot Market, Inc. v. Byrne*, 141 M 382, 378 P 2d 220.

Statutes Violating This Provision

Chapter 277, Laws of 1965, providing for nonresident contractors' license fees, was invalid under this section since, by imposing a one per cent tax on gross receipts rather than on profits, it was arbitrary and unreasonably discriminatory. *State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization*, 145 M 380, 403 P 2d 635.

Sec. 1a.

Income Tax

The provisions of section 84-4905, before the 1955 amendment, relating to adjusted gross income, did not violate this section. *State ex rel. Anderson v. State Board of Equalization*, 133 M 8, 319 P 2d 221, 228.

This section does not impose an affirmative duty to replace property taxes entirely

with income taxes. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

The mere fact that the income-tax law does not operate simultaneously upon the incomes of persons, firms, and corporations does not make it invalid. *State v. Toomey*, 135 M 35, 335 P 2d 1051.

Sec. 1b.

Gasoline Tax Revenues

Deposit of one per cent of gasoline tax revenues into state park fund as provided by statute did not violate antidiversion amendment of constitution in the absence of proof that legislative finding that not less than one per cent of all gaso-

line sold in state is consumed by motorboats is erroneous and in absence of proof that all motor fuel taxes resulting from use of vehicles on public highways are not expended on public highways. *Harvey v. Blewett*, 151 M 427, 443 P 2d 902.

Sec. 2.

Corporate License Tax on Organization of Church Society

The corporate license tax imposed under R. C. M. 1947, section 84-1501 et seq., on the agricultural activities of a religious society formed for the purposes of farming, stock growing, and other branches of agriculture does not conflict with constitutional provisions relating to religious freedom. *State v. King Colony Ranch*, 137 M 145, 350 P 2d 841.

Educational Purposes

Religious education is exempt as an "educational purpose" and not as "actual religious worship" even though elements of the latter may be present and may serve to strengthen the exemption of all the property. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

The term "educational purposes," as used in this section and section 84-202, exempting property used exclusively for "educational purposes" from taxation, is

not defined in terms of common scholastic institutions of grammar school, high school and university or college. Organizations for the social, intellectual, physical, or religious welfare of the children are exempt equally. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

"Exclusive Use" Defined

The words "exclusive use" consistently have been held to mean the primary and inherent use and not the mere secondary or incidental uses of the property. *Flathead Lake Methodist Camp v. Webb*, 144 M 565, 399 P 2d 90.

Exemption of Church Camp

Where church summer camp, containing twenty-two acres of land and twenty-eight improvements, was "used exclusively for educational purposes" within the meaning of this section and section 84-202, it was exempt from taxation. *Flat-*

head Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Extent of Exemption

When exempting an institution of charity, sufficient residence and recreation area may also be exempt. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Home for Aged Persons

Nonprofit foundation operating home for aged was entitled to tax exemption under statute granting a tax exemption to institutions of purely public charity, notwithstanding evidence that the foundation charged fees, imposed admission requirements and maintained a high standard of care, and notwithstanding argument that 1965 amendment to statute, specifically including homes for aged, was unlawful attempt by legislature to expand exemption allowed by constitution. Bozeman Deaconess Foundation v. Ford, — M —, 439 P 2d 915.

Sec. 3.

Adverse Possession

One in actual possession of surface land, who owned it in fee simple and paid taxes upon it for over thirty years, could not acquire an undivided one-fourth mineral interest, reserved in a deed and thereby severed entirely from the land, by adverse possession, where the minerals were not and could not be assessed separately for taxation under this section. Johnson v. Unknown Heirs, 140 M 128, 368 P 2d 577, 581.

Annual Net Proceeds Tax

"Average of annual net proceeds" as provided by section 84-5408, as amended

Sec. 11.

Construction with Other Sections

This section and section 1 of article XII of the Montana constitution must be construed together with section 15, which refers specifically to the state board of equalization. Yellowstone Pipe Line Co. v. State Board of Equalization, 138 M 603, 358 P 2d 55, 66.

Discriminatory Enforcement

State board of equalization could enforce statute providing for assessment of

Sec. 12.

Laws Not Violating This Provision

Statute amending initiative act provid-

Limits of Public Charity

An institution of purely public charity, which is exempt from taxation under this section and section 84-202, may be devoted to bringing people under religious influence, the beneficiaries of the charity may pay a small portion of the cost, and the activity may be limited to a particular class so long as the numbers who may participate remain somewhat indefinite. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Statutes Held Invalid under This Provision

Chapter 153 of the session laws of Montana, 1961, which discriminatorily restrained the use of trading stamps or other redeemable devices in retail business by imposing an unreasonably high and prohibitive tax for nonpublic purpose, was unconstitutional under this section. Garden Spot Market, Inc. v. Byrne, 141 M 382, 378 P 2d 220.

in 1959, is not the same as the "annual net proceeds" provided by this section and therefore the law is unconstitutional. State ex rel. Roberts v. State Board of Equalization, 138 M 138, 355 P 2d 150, 152.

"Mining Claim"

A "mining claim" is not restricted to a single mining location but may include as many locations as a miner can purchase, and the ground covered by all will constitute a mining claim. United States Gypsum Co. v. Schreiner, 135 M 312, 340 P 2d 548.

property brought into state subsequent to regular assessment date as against trucks and used cars without also enforcing it against every other type of retail inventory and without violating uniformity requirement of constitution. Hardin Auto Co. v. Alley, 149 M 1, 422 P 2d 346.

References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

ing for honorarium for World War II veterans so as to make Korean veterans

eligible to receive honorariums did not violate this section. *Cottingham v. State*

Board of Examiners, 134 M 1, 328 P 2d 907, 920.

Sec. 13.

Cross-References

Printing defined, sec. 19-103.1.

Sec. 15.

Construction with Other Sections

Sections 1 and 11, of article XII of the Montana constitution must be construed together with this section. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 66.

Increased Valuation

State board of equalization's directive to county officials requiring use of certain valuations on grades of farm land for subsequent years, was enforceable by mandamus since the board had not only powers of adjustment, equalization and supervision over assessors under this section and section 84-708, but also the power to issue directives for those purposes. *State ex rel. State Board of Equalization v. Koch*, 145 M 474, 401 P 2d 765.

Intervention of Court

Court may not intervene where action of board is not arbitrary, fraudulent or contrary to law. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

Powers of State Board of Equalization

Board is charged with the duty of adjusting and equalizing the valuation of all taxable property among the several counties and between individual taxpayers. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

The state board of equalization has the power to determine what a particular class should include. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Where the board held "show cause hearings" to afford opportunity to protest board's order of uniform county land value

reclassification but provided no opportunity to cross-examine witnesses nor hear evidence and no stenographic record was kept of the proceedings, such hearings did not fulfill the requirements of due process and uniformity. *State ex rel. State Board of Equalization v. Kovich*, 142 M 201, 383 P 2d 818.

Uniformity of Taxation

As long as the state board of equalization treats property of similar nature and productivity the same, it cannot be said that the constitutional mandate of uniformity is not subserved. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Under the Montana constitution the state board of equalization has the power, in adjusting and equalizing taxation between oil pipelines and other properties, i.e., town and city lots, to recognize pipelines as a class in itself, and still not violate the requirement of uniformity. *Yellowstone Pipe Line Co. v. State Board of Equalization*, 138 M 603, 358 P 2d 55, 67.

Writ of Prohibition

District court acted prematurely in issuing writ prohibiting state board of equalization from proceeding further under section 84-605, holding a public hearing and equalizing or increasing the assessed values of farm lands in county, which prevented board from discharging its constitutional duties. *State ex rel. Reid v. District Court*, 134 M 128, 328 P 2d 634, 635.

References

Cited in *Blair v. Potter*, 132 M 176, 315 P 2d 177, 182.

of utility facilities, do not violate this section. *Jones v. Burns*, 138 M 268, 357 P 2d 22, 33.

Sec. 16.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocation

ARTICLE XIII—PUBLIC INDEBTEDNESS

Sec. 1.

Laws Violating This Provision

An appropriation to pay for secretarial services of two private veterans' organizations maintaining service offices in Fort

Harrison, Montana, which were not under the control of the state, was prohibited by this section even though the legislation was for a public purpose. *Veterans' Wel-*

fare Commission v. Department of Montana, Veterans of Foreign Wars, 141 M 500, 379 P 2d 107.

Relocation of Utilities

The provisions of former section 32-1625, relating to the costs of relocation of

utility facilities, do not violate this section. Jones v. Burns, 138 M 268, 357 P 2d 22, 34.

References

Wilson v. State Highway Commission, 140 M 253, 370 P 2d 486, 487.

Sec. 2.

"Debt or Liability"

Section 2, article IX of the Montana constitution amended the words "debt or liability" as they appear in this section and has effectively confined them to debts or liabilities which must be retired out of ad valorem taxes. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 916.

Laws Not Violating This Provision

Statute amending initiative act provid-

ing for honorarium for World War II veterans so as to make Korean veterans eligible to receive honorariums was not required to be submitted to the voters under this section. Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907, 915, 916.

References

Cited in Morgan v. Murray, 134 M 92, 328 P 2d 644, 649.

Sec. 5.

References

State ex rel. Keast v. Krieg, 147 M 164, 410 P 2d 710.

Sec. 6. No city, town, township, school district or high school district shall be allowed to become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding five per centum (5%) of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such city, town, township, school district or high school district shall be void; and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section; provided, however, that the legislative assembly may extend the limit mentioned in this section, by authorizing municipal corporations to submit the question to a vote of the taxpayers affected thereby, when such increase is necessary to construct a sewerage system or to procure a supply of water for such municipality which shall own and control said water supply and devote the revenues derived therefrom to the payment of the debt.

Compiler's Note

This constitutes sec. 6 of article XIII as amended by act approved March 7, 1957 (Ch. 161, Laws of 1957), adopted at the general election of November 1958, effective under governor's proclamation, December 8, 1958. This amendment inserted the words "high school district" each time they appear and inserted the phrase "and each school district and each high school district shall have separate and independent bonding capacities within the limitation of this section."

Combined Bond Issue

Bonds issued pursuant to a plan authorizing high school district and com-

mon school district included therein to build grade school and high school in one compact unit sharing common facilities was not an attempt to circumvent debt limits imposed on the districts by the constitution. Long v. School District No. 44, 149 M 220, 425 P 2d 822.

Lease Payments

Under resolution providing that city would convey title to properties to party who would cause to be built on one property a city approved building which the city would rent for an annual rental for a period of three years with option in the city to purchase property together with the building thereon, lease payments were

forms of indebtedness within the meaning of this section. *State ex rel. Simmons v.*

City of Missoula, 144 M 210, 395 P 2d 249, 251.

ARTICLE XV—CORPORATIONS OTHER THAN MUNICIPAL

Sec. 4.

Operation and Effect

A corporation may not deprive a stockholder of the right of cumulative voting by any act on its part. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

Stockholders may contract among themselves with respect to voting their stock

and a contract to refrain from cumulative voting is valid. However, an invalid bylaw, attempting to dispense with cumulative voting, was not enforceable as a contract, even among those stockholders assenting to it. *Sensabaugh v. Polson Plywood Co.*, 135 M 562, 342 P 2d 1064.

Sec. 9.

Acts Not Violating This Provision

The requirements of subsection 9 of section 11-602, R. C. M. 1947, that a portion of platted subdivisions be dedicated to public park purposes is not an unconstitutional delegation of legislative authority to city and county authorities, nor is the enforcement of these requirements a confiscation of private property without compensation or an invalid extension of the police power. *Billings Properties, Inc. v. Yellowstone County*, 144 M 25, 394 P 2d 182.

Operation and Effect

Under the guise of police power the state and municipal subdivisions thereof have the power and the duty to do all things necessary to protect the public in matters of the preservation, among other things of the health and well being of the community. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 30.

Under police power the state can provide for the destruction of diseased animals even though provision for compensation to the owner has not been made. *Ruona v. City of Billings*, 136 M 554, 323 P 2d 29, 31.

Sec. 13.

Lease of State Lands

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. *State ex rel. Hughes v. State Board of Land Commrs.*, 137 M 510, 353 P 2d 331, 336.

References

State ex rel. Johnson v. District Court of Fourth Judicial District, 148 M 22, 417 P 2d 109, 112.

Sec. 20.

Fair Trade Act

The Fair Trade Act (now repealed) permitted price-fixing in violation of this section and was therefore invalid. *Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc.*, 139 M 15, 359 P 2d 644, distinguished in 141 M 149, 159, 376 P 2d 508.

Operation and Effect

The activity proscribed by this section has no relation to police power. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 514.

Price-Fixing

This section is not only aimed at monopolies but also invalidates all price-fixing contracts, even in situations where there is open competition and no danger of monopoly. *Union Carbide & Carbon Corp. v. Skaggs Drug Center, Inc.*, 139 M 15, 359 P 2d 644.

References

Cited in *Professional & Business Men's Life Ins. Co. v. Bankers Life Co.*, 163 F Supp 274, 279; *McNussen v. Graybeal*, 146 M 173, 405 P 2d 447.

ARTICLE XVI—COUNTIES—MUNICIPAL CORPORATIONS AND OFFICES

Sec. 2.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 4.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 5.

References

Husky Hi Power, Inc. v. Schmidt,
140 M 353, 372 P 2d 142, 144.

Sec. 6.

Cross-References

Section 46, Article V would permit

deviation from this section under emergency conditions.

Sec. 7.

City-County Government

A city-county planning board established without reference to the electors

was in violation of this section. Plath v. Hi-Ball Contractors, Inc., 139 M 263, 362 P 2d 1021, 1025.

ARTICLE XVII—PUBLIC LANDS

Sec. 1.

Leasing for Underground Storage

The law authorizing the lease of state lands for underground storage of natural gas does not violate this section. State ex rel. Hughes v. State Board of Land Commrs., 137 M 510, 353 P 2d 331, 335.

Market Value

The test of "willing buyer-willing seller" has little applicability in awarding a lease to farm land by the state. A more appropriate test is the value of similar

leases in the particular community, coupled with the applicant's ability as a farmer and other variables to be considered by the state in securing as large a return as possible on the land, while preserving its productive capacity. State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

Sec. 2.

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

Sec. 3.

References

State ex rel. Werner v. District Court, 142 M 145, 382 P 2d 824.

ARTICLE XIX—MISCELLANEOUS SUBJECTS AND FUTURE AMENDMENTS

Sec. 2.

Initiative Measure Unconstitutional

Proposed initiative measure no. 63 which would legalize lotteries and repeal sections 94-3001 to 94-3011 is unconstitutional. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 763.

Operation and Effect

The framers of the constitution were seeking to suppress and restrain the spirit of gambling which is cultivated and stimulated by schemes whereby one is induced to hazard his earnings with the hope of

large winnings. The statutes which define and prohibit lotteries must therefore be interpreted with this purpose in mind. *State v. Cox*, 136 M 507, 349 P 2d 104, 106.

The provisions of this section are both mandatory and prohibitory. *State ex rel. Steen v. Murray*, 144 M 61, 394 P 2d 761, 763.

Sec. 6.

Cross-References

Section 46, Article V would permit

Sec. 8.

Referred Measure

Laws 1969, ch. 65 submitted to electors the question whether a constitution convention should be called. The act read: "Section 1. At the general election to be held in November 1970 there shall be submitted to the electors of the state of Montana the question whether the legislative assembly at the 1971 session, and in accordance with article XIX, section 8 of the Montana constitution, shall call a convention to revise, alter, or amend the constitution of Montana."

Constitutional Revision Commission [Chapter 53, Laws 1969]

An act to establish the Montana constitution revision commission to study the Montana constitution.

Section 1. Constitution revision commission — creation — composition — term.

(1) A temporary state agency known as the Montana constitution revision commission consisting of sixteen (16) members is hereby created to study the Montana constitution. Members of the commission shall be appointed for two (2) year terms beginning April 1, 1969, consideration being given to geographic, economic, and other pertinent factors, as follows:

(a) four (4) members of the house of representatives appointed by the speaker, no more than two (2) of whom shall be affiliated with the same political party;

(b) four (4) members of the senate appointed by the committee on committees, no more than two (2) of whom shall be affiliated with the same political party;

(c) four (4) members appointed by the governor, no more than two (2) of whom shall be affiliated with the same political party;

(d) four (4) members appointed by the supreme court, no more than two (2) of whom shall be affiliated with the same political party.

Valuable Consideration

Where one is required to make an outlay of money in order to participate in a scheme whereby an award is made by chance, the participant pays valuable consideration for the chance to participate, notwithstanding the fact he may also receive merchandise at the same time that the outlay is made. *State v. Cox*, 136 M 507, 349 P 2d 104. (*State ex rel. Stafford v. Fox-Great Falls Theatre Corp.*, 114 M 52, 132 P 2d 689, distinguished.)

deviation from this section under emergency conditions.

(2) Commission members who are not government employees or elective officials shall be reimbursed for actual and necessary expenses incurred as commission members. However, the term "elective officials," as used in this subsection, excludes members of the legislative assembly.

Section 2. Detailed study of Montana constitution to be conducted—written report before September 1, 1970—contents of report—progress report. (1) The commission shall conduct a detailed study of the Montana constitution, compile factual data on whether the constitution impairs effective state government, compare the Montana constitution with those of other states and publish a written report to the forty-second legislative assembly prior to September 1, 1970. The report shall contain the findings of the commission, recommendations, a draft of any proposals for change in the Montana constitution, and recommendations of the most feasible and desirable method of implementing any proposals for change.

(2) The commission may publish progress and other reports during its study and disseminate information on the constitution as deemed desirable. Upon request, commission members shall meet with the legislative council, governor, and supreme court to report progress on the study.

Section 3. Chairman selected—rules adopted—written record—staff and compensation—special consultants—state agencies to co-operate. (1) The commission shall elect a chairman and other necessary officers, and shall establish its own rules relating to procedures, meetings, and quorums.

(2) The commission shall maintain a written record of its proceedings and its finances which shall be open to inspection

by any person at the office of the commission during regular office hours.

(3) The commission may employ any necessary staff, assign their duties, and fix their compensation. Staff appointed shall serve at the pleasure of the commission.

(4) The commission may retain special consultants, appoint advisory groups, and consult with or request assistance from any state agency, private group, or individual deemed desirable.

(5) Upon request, state agencies shall co-operate with the commission by furnishing assistance and data to the extent possible.

Section 4. Federal or private funds. The commission may accept and expend

Sec. 9.

Proposed Amendment

Chapter 66, Laws 1969, proposes to amend this section to read as follows:

"Section 9. Amendments to this constitution may be proposed in either house of the legislative assembly, and if the same shall be voted for by two-thirds of the members elected to each house, such proposed amendments, together with the ayes and nays of each house thereon, shall be entered in full on their respective journals; and the secretary of state shall cause the said amendment or amendments to be published in full in at least one newspaper in each county (if such there be) for three months previous to the next general election for members to the legislative assembly; and at said election the said amendment or amendments shall be submitted to the qualified electors of the state for their approval or rejection and such as are approved by a majority of those voting thereon shall become part of the constitution. Should more amendments than one (1) be submitted at the same election, they shall be so prepared and distinguished by numbers or otherwise that each can be voted upon separately. Not more than three amendments to this constitution shall be submitted at the same election, except that there may be submitted at each of the general elections held in the years 1972, 1974 and 1976, in addition to the three amendments otherwise authorized by this section, an amendment or amendments providing for the reorganization of the executive department of gov-

any federal or private funds which may be available for support of the study.

Effective Date

Section 5 of Ch. 53, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

Initiative Measure

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, could not be considered as an amendment to the Montana constitution where it did not comply with this section or section 9, article XIX. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 764.

ernment which may include the revision or repeal of sections of this constitution relating to any boards, offices, and departments other than legislative and judicial offices. The reorganization of the executive department is a single subject, and an additional amendment relating to that subject authorized by this section may be submitted to the qualified electors of the state in the form of a title clearly expressing its subject."

Cross-Reference

Explanatory statement of proposed Constitutional amendments to be prepared by attorney general, sec. 37-104.1.

Initiative Measure

Proposed initiative measure no. 63, which would legalize lotteries and repeal sections 94-3001 to 94-3011, being unconstitutional, could not be considered as an amendment to the Montana constitution where it did not comply with this section or section 8, article XIX. State ex rel. Steen v. Murray, 144 M 61, 394 P 2d 761, 764.

Presentation to Governor

It was a fatal defect for the legislature to ignore the governor, in neglecting and refusing to present proposed constitutional amendments to the governor in full as passed by the house and senate for the governor's approval or disapproval. State ex rel. Livingstone v. Murray, 137 M 557, 354 P 2d 552, 556.

ARTICLE XXI—MONTANA TRUST AND LEGACY FUND

Sec. 1.

References

In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

Sec. 6.

References

In re Montana Trust and Legacy Fund,
143 M 218, 388 P 2d 366.

Sec. 7.

References

In re Montana Trust and Legacy Fund,
143 M 218, 388 P 2d 366.

Sec. 17.

Sale of Securities

The securities which constitute these funds may be sold before maturity for the benefit of the funds and the state institutions for which they were created, and

may even be sold for less than face value provided that the sale price is not less than the purchase price. In re Montana Trust and Legacy Fund, 143 M 218, 388 P 2d 366.

TABLE OF CORRESPONDING CODE SECTIONS

Revised Codes 1921 and 1935 to Revised Codes 1947

This table shows the disposition made of the sections of the Revised Codes of 1921 and the Revised Codes of 1935 since publication of Replacement Volume 1.

1921 & 1935	1947	1921 & 1935	1947
42, 43	Rep. Ch. 194, Sec. 13, L. 1967	391	Rep. Ch. 264, Sec. 10-102, L. 1963
45	Rep. Ch. 194, Sec. 13, L. 1967	437, 438	Rep. Ch. 202, Sec. 3, L. 1959
47	Rep. Ch. 194, Sec. 13, L. 1967	440	Rep. Ch. 202, Sec. 3, L. 1959
48	Unconstitutional, 246 F Supp 396	464-465	Rep. Ch. 177, Sec. 51, L. 1965
53, 54	Rep. Ch. 194, Sec. 13, L. 1967	466, 467	Rep. Ch. 68, Sec. 10, L. 1967
56	Rep. Ch. 18, Sec. 4, L. 1969	469-470	Rep. Ch. 177, Sec. 51, L. 1965
61-64	Rep. Ch. 1, Sec. 4, L. 1965	471	Rep. Ch. 68, Sec. 10, L. 1967
66, 67	Rep. Ch. 1, Sec. 4, L. 1965	508	Rep. Ch. 68, Sec. 10, L. 1967
69-73	Rep. Ch. 1, Sec. 4, L. 1965	519-521	Rep. Ch. 80, Sec. 14, L. 1961
76-78.3	Rep. Ch. 1, Sec. 4, L. 1965	531-536	Rep. Ch. 368, Sec. 248, L. 1969
137	Rep. Ch. 80, Sec. 14, L. 1961	537.1-551	Rep. Ch. 368, Sec. 248, L. 1969
145.1-145.7	Rep. Ch. 300, Sec. 143, L. 1967	553-562	Rep. Ch. 368, Sec. 248, L. 1969
148	Rep. Ch. 177, Sec. 51, L. 1965	566-598	Rep. Ch. 368, Sec. 248, L. 1969
153	Rep. Ch. 147, Sec. 242, L. 1963	600-641	Rep. Ch. 368, Sec. 248, L. 1969
157	Rep. Ch. 94, Sec. 5, L. 1969	644-652	Rep. Ch. 368, Sec. 248, L. 1969
179	Rep. Ch. 147, Sec. 242, L. 1963	654-662	Rep. Ch. 368, Sec. 248, L. 1969
188	Rep. Ch. 177, Sec. 51, L. 1965	663	Rep. Ch. 156, Sec. 11, L. 1965
198.1-198.8	Rep. Ch. 147, Sec. 242, L. 1963	666	Rep. Ch. 156, Sec. 11, L. 1965
201	Rep. Ch. 177, Sec. 51, L. 1965	665-670	Rep. Ch. 368, Sec. 248, L. 1969
202	Rep. Ch. 129, Sec. 1, L. 1963	673.1	Rep. Ch. 368, Sec. 248, L. 1969
204, 205	Rep. Ch. 129, Sec. 1, L. 1963	673.2	Rep. Ch. 156, Sec. 11, L. 1965
219	Rep. Ch. 129, Sec. 1, L. 1963	673.6-673.7	Rep. Ch. 156, Sec. 11, L. 1965
223	Rep. Ch. 177, Sec. 51, L. 1965	673.8	Rep. Ch. 368, Sec. 248, L. 1969
238-241	Rep. Ch. 97, Sec. 32, L. 1961	677-681	Rep. Ch. 368, Sec. 248, L. 1969
249	Rep. Ch. 97, Sec. 32, L. 1961	683-735	Rep. Ch. 368, Sec. 248, L. 1969
251-253	Rep. Ch. 80, Sec. 14, L. 1961	757-782	Rep. Ch. 368, Sec. 248, L. 1969
254	Rep. Ch. 271, Sec. 33, L. 1963	784-797	Rep. Ch. 368, Sec. 248, L. 1969
255-259	Rep. Ch. 80, Sec. 14, L. 1961	798-800	Rep. Ch. 194, Sec. 13, L. 1967
259.2	Rep. Ch. 271, Sec. 33, L. 1963	801-812.11	Rep. Ch. 368, Sec. 248, L. 1969
259.4	Rep. Ch. 271, Sec. 33, L. 1963	812.13	Rep. Ch. 368, Sec. 248, L. 1969
263-266	Rep. Ch. 80, Sec. 14, L. 1961	812.14	Rep. Ch. 20, Sec. 3, L. 1959
268, 269	Rep. Ch. 80, Sec. 14, L. 1961	812.15	Rep. Ch. 368, Sec. 248, L. 1969
274	Rep. Ch. 80, Sec. 14, L. 1961	813-828.7	Rep. Ch. 368, Sec. 248, L. 1969
290	Rep. Ch. 177, Sec. 51, L. 1965	829-829.11	Rep. Ch. 368, Sec. 248, L. 1969
295-298	Rep. Ch. 158, Sec. 11, L. 1959	860	Rep. Ch. 127, Sec. 1, L. 1967
301	Rep. Ch. 147, Sec. 242, L. 1963	913-916	Rep. Ch. 75, Sec. 5, L. 1967
303	Rep. Ch. 158, Sec. 11, L. 1959	940	Rep. Ch. 93, Sec. 44, L. 1969
306	Rep. Ch. 81, Sec. 3, L. 1961	1105-1112	Rep. Ch. 26, Sec. 1, L. 1961
310-315	Rep. Ch. 271, Sec. 33, L. 1963	1171, 1172	Rep. Ch. 262, Sec. 16, L. 1969
317-319	Rep. Ch. 271, Sec. 33, L. 1963	1175	Rep. Ch. 366, Sec. 27, L. 1969
349.1	Rep. Ch. 158, Sec. 7, L. 1967	1199	Rep. Ch. 79, Sec. 1, L. 1961
349.54—349.62	Rep. Ch. 19, Sec. 10, L. 1967	1212	Rep. Ch. 75, Sec. 1, L. 1961
349.65	Rep. Ch. 147, Sec. 242, L. 1963	1413	Rep. Ch. 199, Sec. 101, L. 1965
368	Rep. Ch. 129, Sec. 1, L. 1963	1414	Rep. Ch. 266, Sec. 82, L. 1963
376	Rep. Ch. 177, Sec. 51, L. 1965	1415	Rep. Ch. 199, Sec. 101, L. 1965
380-383	Rep. Ch. 305, Sec. 2, L. 1967	1416, 1417	Rep. Ch. 266, Sec. 82, L. 1963
		1429	Rep. Ch. 198, Sec. 2 and Ch. 213, Sec. 9, L. 1963
		1444	Rep. Ch. 213, Sec. 9, L. 1963
		1445	Rep. Ch. 112, Sec. 15, L. 1963

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1447-1450	Rep. Ch. 112, Sec. 15, L. 1963	1795-1798	Rep. Ch. 197, Sec. 12-109, L. 1965
1451, 1452	Rep. Ch. 112, Sec. 15 and Ch. 213, Sec. 9, L. 1963	1800	Rep. Ch. 197, Sec. 12-109, L. 1965
1453-1455	Rep. Ch. 112, Sec. 15, L. 1963	1805.10	Rep. Ch. 93, Sec. 44, L. 1969
1484-1485	Rep. Ch. 199, Sec. 101, L. 1965	1805.30	Rep. Ch. 257, Sec. 10, L. 1965
1486, 1487	Rep. Ch. 266, Sec. 82, L. 1963	1925, 1926	Rep. Ch. 89, Sec. 4, L. 1961
1488	Rep. Ch. 199, Sec. 101, L. 1965	1937	Rep. Ch. 184, Sec. 8, L. 1961
1489-1492	Rep. Ch. 266, Sec. 82, L. 1963	1939	Rep. Ch. 184, Sec. 8, L. 1961
1493-1497	Rep. Ch. 199, Sec. 101, L. 1965	1949-1953	Rep. Ch. 280, Sec. 22, L. 1965
1498-1500	Rep. Ch. 266, Sec. 82, L. 1963	1954	Rep. Ch. 280, Sec. 1, L. 1965
1503-1506	Rep. Ch. 199, Sec. 101, L. 1965	1955	Rep. Ch. 280, Sec. 22, L. 1965
1511	Rep. Ch. 199, Sec. 101, L. 1965	1956	Rep. Ch. 280, Sec. 1, L. 1965
1512-1515	Rep. Ch. 266, Sec. 82, L. 1963	1957	Rep. Ch. 280, Sec. 1, L. 1965
1516-1517	Rep. Ch. 199, Sec. 101, L. 1965	1958	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963
1518	Rep. Ch. 266, Sec. 82, L. 1963	1959	Rep. Ch. 280, Sec. 1, L. 1965
1519	Rep. Ch. 199, Sec. 101, L. 1965	1960	Rep. Ch. 280, Sec. 22, L. 1965
1520	Rep. Ch. 189, Sec. 2, L. 1959	1961	Rep. Ch. 129, Sec. 1, L. 1963
1521-1523	Rep. Ch. 213, Sec. 9, L. 1963	1962	Rep. Ch. 280, Sec. 22, L. 1965
1524	Rep. Ch. 266, Sec. 82, L. 1963	1963	Rep. Ch. 147, Sec. 242, L. 1963
1525	Rep. Ch. 199, Sec. 101, L. 1965	1964	Rep. Ch. 280, Sec. 22, L. 1965
1526	Rep. Ch. 266, Sec. 82, L. 1963	1966-1986	Rep. Ch. 280, Sec. 22, L. 1965
1527-1528	Rep. Ch. 199, Sec. 101, L. 1965	1987	Rep. Ch. 147, Sec. 242, L. 1963
1529-1532	Rep. Ch. 266, Sec. 82, L. 1963	1988	Rep. Ch. 280, Sec. 22, L. 1965
1533	Rep. Ch. 199, Sec. 101, L. 1965	1989	Rep. Ch. 147, Sec. 242, L. 1963
1534	Rep. Ch. 266, Sec. 82, L. 1963	1990-1995	Rep. Ch. 280, Sec. 22, L. 1965
1535-1536	Rep. Ch. 199, Sec. 101, L. 1965	2097-2110	S. Ch. 137, L. 1949
1537	Rep. Ch. 266, Sec. 82, L. 1963	2265-2267	Rep. Ch. 249, Sec. 23, L. 1967
1538	Rep. Ch. 199, Sec. 101, L. 1965	2381.22	Rep. Ch. 197, Sec. 12-109, L. 1965
1539, 1540	Rep. Ch. 266, Sec. 82, L. 1963	2381.23	Rep. Ch. 60, Sec. 1, L. 1969
1541	Rep. Ch. 199, Sec. 101, L. 1965	2396.1	Rep. Ch. 197, Sec. 12-109, L. 1965
1542-1544	Rep. Ch. 266, Sec. 82, L. 1963	2396.3	Rep. Ch. 197, Sec. 12-109, L. 1965
1545	Rep. Ch. 199, Sec. 101, L. 1965	2444-2446	Rep. Ch. 197, Sec. 223, L. 1967
1546, 1546.1	Rep. Ch. 266, Sec. 82, L. 1963	2448	Rep. Ch. 197, Sec. 223, L. 1967
1575.3, 1575.4	Rep. Ch. 215, Sec. 3, L. 1965	2450	Rep. Ch. 197, Sec. 223, L. 1967
1576-1579	Rep. Ch. 190, Sec. 1, L. 1959	2452-2484	Rep. Ch. 197, Sec. 223, L. 1967
1611-1620	Rep. Ch. 197, Sec. 12-109, L. 1965	2485-2495	Rep. Ch. 18, Sec. 12, L. 1967
1622-1632	Rep. Ch. 197, Sec. 12-109, L. 1965	2497-2502	Rep. Ch. 18, Sec. 12, L. 1967
1634-1647	Rep. Ch. 197, Sec. 12-109, L. 1965	2540, 2541	Rep. Ch. 197, Sec. 223, L. 1967
1649-1650	Rep. Ch. 197, Sec. 12-109, L. 1965	2543-2561	Rep. Ch. 197, Sec. 223, L. 1967
1676-1682	Rep. Ch. 197, Sec. 12-109, L. 1965	2562-2577	Rep. Ch. 107, Sec. 18, L. 1965
1684-1701	Rep. Ch. 197, Sec. 12-109, L. 1965	2578-2582	Rep. Ch. 307, Sec. 27, L. 1967
1703-1713	Rep. Ch. 197, Sec. 12-109, L. 1965	2586-2588	Rep. Ch. 307, Sec. 27, L. 1967
1721-1725	Rep. Ch. 197, Sec. 12-109, L. 1965	2589	Rep. Ch. 122, Sec. 12, L. 1965
1727-1735	Rep. Ch. 197, Sec. 12-109, L. 1965	2591, 2592	Rep. Ch. 307, Sec. 27, L. 1967
1737-1739	Rep. Ch. 197, Sec. 12-109, L. 1965	2594-2599	Rep. Ch. 307, Sec. 27, L. 1967
1741	Rep. Ch. 197, Sec. 12-109, L. 1965	2615-2619	Rep. Ch. 197, Sec. 223, L. 1967
1760.1-1760.6	Rep. Ch. 101, Sec. 1, L. 1959	2641-2657	Rep. Ch. 197, Sec. 223, L. 1967
1763.6	Rep. Ch. 256, Sec. 5, L. 1965	2738	Rep. Ch. 229, Sec. 14, L. 1967
1764	Rep. Ch. 197, Sec. 12-109, L. 1965	2739, 2740	Rep. Ch. 129, Sec. 1, L. 1963
		2744	Rep. Ch. 229, Sec. 14, L. 1967
		2757, 2758	Rep. Ch. 229, Sec. 14, L. 1967
		2815.77-2815.86	Rep. Ch. 154, Sec. 17, L. 1965
		2815.111	Rep. Ch. 154, Sec. 17, L. 1965
		2815.116	Rep. Ch. 154, Sec. 17, L. 1965
		2815.119-2815.120	Rep. Ch. 154, Sec. 17 L. 1965
		2815.122	Rep. Ch. 154, Sec. 17, L. 1965
		2815.156	Rep. Ch. 147, Sec. 242, L. 1963
		2821-2822	Rep. Ch. 177, Sec. 51, L. 1965

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2921	Rep. Ch. 197, Sec. 1, L. 1959	4448	S. M.R.Civ.P., Rule 4 D
2963	Rep. Ch. 147, Sec. 242, L. 1963	4455	Rep. Ch. 68, Sec. 10, L. 1967
2994, 2995	Rep. Ch. 233, Sec. 3, L. 1969	4479	Rep. Ch. 197, Sec. 12-109, L. 1965
3012-3021	Rep. Ch. 341, Sec. 30, L. 1969	4486.1, 4486.2	Rep. Ch. 197, Sec. 12-109, L. 1965
3025-3033	Rep. Ch. 341, Sec. 30, L. 1969	4542-4544	Rep. Ch. 198, Sec. 98, L. 1967
3116-3124	Rep. Ch. 338, Sec. 43, L. 1969	4562.1-4562.3	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
3228.10	Rep. Ch. 177, Sec. 51, L. 1965	4594	Rep. Ch. 136, Sec. 1, L. 1961
3232	Rep. Ch. 138, Sec. 5, L. 1967	4630.2	Rep. Ch. 197, Sec. 12-109, L. 1965
3241.1-3241.7	Rep. Ch. 118, Sec. 32, L. 1969	4713-4716	Rep. Ch. 197, Sec. 12-109, L. 1965
3241.9-3241.12	Rep. Ch. 118, Sec. 32, L. 1969	4813.2	Rep. Ch. 264, Sec. 10-102, L. 1963
3258	Rep. Ch. 93, Sec. 44, L. 1969	4845, 4846	Rep. Ch. 197, Sec. 12-109, L. 1965
3291	Rep. Ch. 147, Sec. 242, L. 1963	4860	Rep. Ch. 68, Sec. 10, L. 1967
3292	Rep. Ch. 93, Sec. 44, L. 1969	4945	Rep. Ch. 196, Sec. 2, L. 1967
3310	Rep. Ch. 177, Sec. 51, L. 1965	4998	Rep. Ch. 260, Sec. 12, L. 1967
3357, 3358	Rep. Ch. 32, Sec. 1, L. 1953	5016, 5017	Rep. Ch. 67, Sec. 11, L. 1967
3359	Rep. Ch. 24, L. 1943; Ch. 32, Sec. 1, L. 1953	5039.56	Rep. Ch. 99, Sec. 43, L. 1969
3360-3373	Rep. Ch. 32, Sec. 1, L. 1953	5148.1	Unconstitutional, 134 M 355, 332 P 2d 501
3454, 3455	Rep. Ch. 99, Sec. 43, L. 1969	5158.2	Rep. Ch. 147, Sec. 242, L. 1963
3509	Rep. Ch. 188, Sec. 4, L. 1959	5508	Rep. Ch. 67, Sec. 11, L. 1967
3525	Rep. Ch. 188, Sec. 4, L. 1959	5668.22, 5668.23	Rep. Ch. 147, Sec. 242, L. 1963
3575.3	Rep. Ch. 147, Sec. 242, L. 1963	5668.28	Rep. Ch. 147, Sec. 242, L. 1963
3592.17	Rep. Ch. 177, Sec. 51, L. 1965	5696	Rep. Ch. 232, Sec. 12, L. 1963
3593, 3594	Rep. Ch. 361, Sec. 7, L. 1969	5707	Rep. Ch. 232, Sec. 12, L. 1963
3634.1, 3634.2	Rep. Ch. 147, Sec. 242, L. 1963	5711, 5712	Rep. Ch. 232, Sec. 12, L. 1963
3722	Rep. Ch. 56, Sec. 1, L. 1969	5715	Rep. Ch. 232, Sec. 12, L. 1963
3731, 3732	Rep. Ch. 38, Sec. 2, L. 1963	5731, 5732	Rep. Ch. 169, Sec. 4, L. 1963
3736	Rep. Ch. 38, Sec. 2, L. 1963	5856-5866	Rep. Ch. 199, Sec. 1, L. 1961
3784	Rep. Ch. 129, Sec. 1 and Ch. 212, Sec. 3, L. 1963	5900-5915	Rep. Ch. 300, Sec. 143, L. 1967
3786-3788	Rep. Ch. 129, Sec. 1, L. 1963	5917	Rep. Ch. 300, Sec. 143, L. 1967
3815	Rep. Ch. 93, Sec. 44, L. 1969	5918-5928	Rep. Ch. 300, Sec. 143, L. 1967
3821	Rep. Ch. 199, Sec. 101, L. 1965	5930-5953	Rep. Ch. 300, Sec. 143, L. 1967
3913.1, 3913.2	Rep. Ch. 153, Sec. 14, L. 1965	5954	Rep. Ch. 264, Sec. 10-102, L. 1963
3913.3	Rep. Ch. 174, Sec. 16, L. 1961	5955	Rep. Ch. 300, Sec. 143, L. 1967
4026-4050	Rep. Ch. 251, Sec. 28, L. 1961	5956	Rep. Ch. 264, Sec. 10-102, L. 1963
4053	Rep. Ch. 251, Sec. 28, L. 1961	5957-6013	Rep. Ch. 300, Sec. 143, L. 1967
4056-4078	Rep. Ch. 250, Sec. 24, L. 1963	6014.63	Rep. Ch. 129, Sec. 1, L. 1963
4079-4127	Rep. Ch. 264, Sec. 10-102, L. 1963	6014.91, 6014.92	Rep. Ch. 264, Sec. 10-102, L. 1963
4134-4138	Rep. Ch. 264, Sec. 10-102, L. 1963	6014.100, 6014.101	Rep. Ch. 264, Sec. 10-102, L. 1963
4139.6	Rep. Ch. 93, Sec. 44, L. 1969	6014.127	Rep. Ch. 264, Sec. 10-102, L. 1963
4208.1-4208.11	Rep. Ch. 55, Sec. 3, L. 1965	6109.12-6109.39	Rep. Ch. 236, Sec. 30, L. 1963
4212-4229	Rep. Ch. 99, Sec. 43, L. 1969	6155	Rep. Ch. 43, Sec. 4, L. 1959
4230.1	Rep. Ch. 99, Sec. 43, L. 1969	6236	Rep. Ch. 67, Sec. 11 and Ch. 68, Sec. 10, L. 1967
4232	Rep. Ch. 99, Sec. 43, L. 1969	6450-6468	Rep. Ch. 198, Sec. 98, L. 1967
4234-4238	Rep. Ch. 99, Sec. 43, L. 1969	6535	Rep. Ch. 264, Sec. 10-102, L. 1963
4240-4243	Rep. Ch. 99, Sec. 43, L. 1969	6537-6539	Rep. Ch. 264, Sec. 10-102, L. 1963
4244	Rep. Ch. 160, Sec. 24, L. 1965	6648-6661.1	Rep. Ch. 300, Sec. 143, L. 1967
4245	Rep. Ch. 99, Sec. 43, L. 1969	6721	Rep. Ch. 213, Sec. 3, L. 1959
4246	Rep. Ch. 160, Sec. 24, L. 1965	6734	Rep. Ch. 213, Sec. 3, L. 1959
4247-4257	Rep. Ch. 99, Sec. 43, L. 1969	6736-6739	Rep. Ch. 213, Sec. 3, L. 1959
4258	Rep. Ch. 160, Sec. 24, L. 1965	6878-6880	Rep. Ch. 264, Sec. 10-102, L. 1963
4259-4264	Rep. Ch. 99, Sec. 43, L. 1969		
4273	Rep. Ch. 160, Sec. 24, L. 1965		
4276	Rep. Ch. 307, Sec. 27, L. 1967		
4396.1	Rep. Ch. 194, Sec. 13, L. 1967		
4405	Rep. Ch. 194, Sec. 13, L. 1967		

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7591, 7592	Rep. Ch. 264, Sec. 10-102, L. 1963	9115, 9116	S. M.R.Civ.P., Rule 4 D
7594-7597	Rep. Ch. 264, Sec. 10-102, L. 1963	9117-9119	Rep. Ch. 13, Sec. 84, L. 1961
7618	Rep. Ch. 264, Sec. 10-102, L. 1963	9121, 9122	Rep. Ch. 13, Sec. 84, L. 1961
7622-7624	Rep. Ch. 264, Sec. 10-102, L. 1963	9123	Rep. Ch. 189, Sec. 2, L. 1963
7633	Rep. Ch. 264, Sec. 10-102, L. 1963	9125-9138	Rep. Ch. 13, Sec. 84, L. 1961
7828-7834	Rep. Ch. 264, Sec. 10-102, L. 1963	9140, 9141	Rep. Ch. 13, Sec. 84, L. 1961
7871-7873	Rep. Ch. 264, Sec. 10-102, L. 1963	9144	Rep. Ch. 13, Sec. 84, L. 1961
8210-8218	Rep. Ch. 264, Sec. 10-102, L. 1963	9146-9148	Rep. Ch. 13, Sec. 84, L. 1961
8224	Rep. Ch. 264, Sec. 10-102, L. 1963	9151-9162	Rep. Ch. 13, Sec. 84, L. 1961
8275-8285	Rep. Ch. 264, Sec. 10-102, L. 1963	9164-9166	Rep. Ch. 13, Sec. 84, L. 1961
8289, 8290	Rep. Ch. 264, Sec. 10-102, L. 1963	9169-9171	Rep. Ch. 13, Sec. 84, L. 1961
8290.1	Rep. Ch. 264, Sec. 10-102, L. 1963	9174-9176	Rep. Ch. 13, Sec. 84, L. 1961
8295	Rep. Ch. 264, Sec. 10-102, L. 1963	9178-9187	Rep. Ch. 13, Sec. 84, L. 1961
8298	Rep. Ch. 264, Sec. 10-102, L. 1963	9189	Rep. Ch. 13, Sec. 84, L. 1961
8306-8317	Rep. Ch. 264, Sec. 10-102, L. 1963	9191	Rep. Ch. 13, Sec. 84, L. 1961
8381	Rep. Ch. 264, Sec. 10-102, L. 1963	9239	Rep. Ch. 13, Sec. 84, L. 1961
8393-8395	Rep. Ch. 32, Sec. 1, L. 1953	9292	Rep. Ch. 264, Sec. 10-102, L. 1963
8396-8400	Rep. Ch. 264, Sec. 10-102, L. 1963	9295	Rep. Ch. 300, Sec. 143, L. 1967
8401-8493	Rep. Ch. 264, Sec. 10-102, L. 1963	9313	Rep. Ch. 13, Sec. 84, L. 1961
8495-8597	Rep. Ch. 264, Sec. 10-102, L. 1963	9315-9317	Rep. Ch. 13, Sec. 84, L. 1961
8607-8611	Rep. Ch. 264, Sec. 10-102, L. 1963	9320-9322	Rep. Ch. 13, Sec. 84, L. 1961
8674-8680	Rep. Ch. 264, Sec. 10-102, L. 1963	9324	Rep. Ch. 13, Sec. 84, L. 1961
8685	Rep. Ch. 200, Sec. 7, L. 1963	9326-9328	Rep. Ch. 13, Sec. 84, L. 1961
8699, 8700	Rep. Ch. 264, Sec. 10-102, L. 1963	9330, 9331	Rep. Ch. 13, Sec. 84, L. 1961
8839	Rep. Ch. 68, Sec. 10, L. 1967	9345-9347	Rep. Ch. 13, Sec. 84, L. 1961
8905-8907	Rep. Ch. 110, Sec. 4, L. 1969	9359-9361	Rep. Ch. 13, Sec. 84, L. 1961
8911, 8912	Rep. Ch. 110, Sec. 4, L. 1969	9365	Rep. Ch. 13, Sec. 84, L. 1961
8956, 8957	Rep. Ch. 147, Sec. 242, L. 1963	9366	S. M.R.Civ.P., Rule 52(a)
8960	Rep. Ch. 147, Sec. 242, L. 1963	9367	Rep. Ch. 13, Sec. 84, L. 1961
9010	Rep. Ch. 13, Sec. 84, L. 1961	9369-9371	S. M.R.Civ.P., Rule 52(b)
9065	Rep. Ch. 7, Sec. 1, L. 1963	9374-9376	Rep. Ch. 13, Sec. 84, L. 1961
9067	Rep. Ch. 13, Sec. 84, L. 1961	9378-9380	Rep. Ch. 13, Sec. 84, L. 1961
9071	Rep. Ch. 13, Sec. 84, L. 1961	9383-9385	Rep. Ch. 13, Sec. 84, L. 1961
9077, 9078	Rep. Ch. 13, Sec. 84, L. 1961	9386	S. M.R.App.Civ.P.
9080	Rep. Ch. 13, Sec. 84, L. 1961	9387	Rep. Ch. 13, Sec. 84, L. 1961
9082-9084	Rep. Ch. 13, Sec. 84, L. 1961	9388	S. M.R.App.Civ.P.
9087, 9088	Rep. Ch. 13, Sec. 84, L. 1961	9389-9394	S. M.R.App.Civ.P., Rules 9, 10, 25
9090	Rep. Ch. 13, Sec. 84, L. 1961	9399	Rep. Ch. 13, Sec. 84, L. 1961
9097	Rep. Ch. 13, Sec. 84, L. 1961	9400	S. M.R.Civ.P., Rule 59(d)
9105	Rep. Ch. 6, Sec. 1, L. 1963	9401	S. M.R.App.Civ.P., Rule 7
9106	S. M.R.Civ.P., Rule 41(e)	9402	S. M.R.App.Civ.P., Rules 9, 10, 25
9107	Rep. Ch. 13, Sec. 84, L. 1961	9403	Rep. Ch. 13, Sec. 84, L. 1961
9108	Rep. Ch. 5, Sec. 1 and Ch. 189, Sec. 2, L. 1963	9404	S. M.R.App.Civ.P., Rule 29
9110, 9111	Rep. Ch. 13, Sec. 84, L. 1961	9405	Rep. Ch. 13, Sec. 84, L. 1961
9112	S. M.R.Civ.P., Rule 4 D	9482, 9483	Rep. Ch. 189, Sec. 2, L. 1963
		9485	Rep. Ch. 189, Sec. 2, L. 1963
		9731	S. M.R.App.Civ.P., Rule 1
		9732	S. M.R.App.Civ.P., Rule 5
		9733	S. M.R.App.Civ.P., Rules 4, 6
		9734	S. M.R.App.Civ.P., Rule 6
		9735-9738	Rep. Ch. 13, Sec. 84, L. 1961
		9739	S. M.R.App.Civ.P., Rule 7
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		9742	S. M.R.App.Civ.P., Rule 7
		9743	S. M.R.App.Civ.P., Rule 6
		9744	S. M.R.App.Civ.P., Rule 13
		9745	S. M.R.App.Civ.P., Rule 1
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9749	S. M.R.App.Civ.P., Rules 9, 10, 25	12302-12414	Rep. Ch. 196, Sec. 2, L. 1967
9750	S. M.R.App.Civ.P., Rule 2	12429-12431	Rep. Ch. 196, Sec. 2, L. 1967
9751	S. M.R.App.Civ.P., Rule 14	12434-12438	Rep. Ch. 199, Sec. 101, L. 1965
9752	S. M.R.App.Civ.P., Rule 15	12439	Rep. Ch. 266, Sec. 82, L. 1963
9753	S. M.R.App.Civ.P., Rule 16	12440-12442	Rep. Ch. 199, Sec. 101, L. 1965
9770-9772	Rep. Ch. 13, Sec. 84, L. 1961	12443-12445	Rep. Ch. 266, Sec. 82, L. 1963
9774	Rep. Ch. 13, Sec. 84, L. 1961	12446-12447	Rep. Ch. 199, Sec. 101, L. 1965
9778-9781	Rep. Ch. 13, Sec. 84, L. 1961	12447.1-12447.10	Rep. Ch. 15, Sec. 1, L. 1959
9784	Rep. Ch. 13, Sec. 84, L. 1961	12447.11-12449	Rep. Ch. 199, Sec. 101, L. 1965
9792	Rep. Ch. 13, Sec. 84, L. 1961	12450	Rep. Ch. 15, Sec. 1, L. 1959
9820	Rep. Ch. 13, Sec. 84, L. 1961	12451-12453	Rep. Ch. 266, Sec. 82, L. 1963
9922-9932	Rep. Ch. 300, Sec. 143, L. 1967	12454	Rep. Ch. 199, Sec. 101, L. 1965
10294	Rep. Ch. 272, Sec. 1, L. 1969	12456	Rep. Ch. 199, Sec. 101, L. 1965
10620	Rep. Ch. 13, Sec. 84, L. 1961	12458-12459	Rep. Ch. 199, Sec. 101, L. 1965
10622	Rep. Ch. 154, Sec. 1, L. 1959	12460	Rep. Ch. 266, Sec. 82, L. 1963
10643-10658	Rep. Ch. 13, Sec. 84, L. 1961	12461-12462	Rep. Ch. 199, Sec. 101, L. 1965
10686-10692	Rep. Ch. 13, Sec. 84, L. 1961	12463	Rep. Ch. 147, Sec. 242 and Ch. 266, Sec. 82, L. 1963
10925	94-3920	12464	Rep. Ch. 199, Sec. 101, L. 1965
11045	Rep. Ch. 314, Sec. 14, L. 1969	12465	Rep. Ch. 266, Sec. 82, L. 1963
11180	Rep. Ch. 196, Sec. 15, L. 1965	12465.1-12465.8	Rep. Ch. 199, Sec. 101, L. 1965
11239	Rep. Ch. 314, Sec. 14, L. 1969	12488, 12489	Rep. Ch. 266, Sec. 82, L. 1963
11254	Rep. Ch. 39, Sec. 1, L. 1969	12491-12493	Rep. Ch. 266, Sec. 82, L. 1963
11464	Rep. Ch. 197, Sec. 12-109, L. 1965	12494	Rep. Ch. 199, Sec. 101, L. 1965
11473	Rep. Ch. 174, Sec. 3, L. 1963	12495	Rep. Ch. 266, Sec. 82, L. 1963
11567	Rep. Ch. 52, Sec. 1, L. 1959	12496	Rep. Ch. 199, Sec. 101, L. 1965
11579	Rep. Ch. 135, Sec. 2, L. 1967	12497	Rep. Ch. 266, Sec. 82, L. 1963
11596, 11597	Rep. Ch. 196, Sec. 2, L. 1967	12499	Rep. Ch. 199, Sec. 101, L. 1965
11608	Rep. Ch. 196, Sec. 2, L. 1967	12500-12502	Rep. Ch. 266, Sec. 82, L. 1963
11610	Rep. Ch. 196, Sec. 2, L. 1967	12503-12512	Rep. Ch. 199, Sec. 101, L. 1965
11612	Rep. Ch. 228, Sec. 6, L. 1969	12513-12515	Rep. Ch. 266, Sec. 82, L. 1963
11615-11631	Rep. Ch. 196, Sec. 2, L. 1967	12519	Rep. Ch. 266, Sec. 82, L. 1963
11703-11721	Rep. Ch. 196, Sec. 2, L. 1967	12520-12521	Rep. Ch. 199, Sec. 101, L. 1965
11728-11846	Rep. Ch. 196, Sec. 2, L. 1967	12522	Rep. Ch. 266, Sec. 82, L. 1963
11847	Rep. Ch. 172, Sec. 3, L. 1961	12524-12528	Rep. Ch. 266, Sec. 82, L. 1963
11848-11853	Rep. Ch. 196, Sec. 2, L. 1967	12529	Rep. Ch. 199, Sec. 101, L. 1965
11862	Rep. Ch. 196, Sec. 2, L. 1967	12530-12532	Rep. Ch. 266, Sec. 82, L. 1963
11866-11868	Rep. Ch. 196, Sec. 2, L. 1967	12533	Rep. Ch. 199, Sec. 101, L. 1965
11870-11911	Rep. Ch. 196, Sec. 2, L. 1967	12534	Rep. Ch. 266, Sec. 82, L. 1963
11912-11914	Rep. Ch. 228, Sec. 6, L. 1969	12535-12545	Rep. Ch. 199, Sec. 101, L. 1965
11915-11970	Rep. Ch. 196, Sec. 2, L. 1967	12546	Rep. Ch. 266, Sec. 82, L. 1963
11973	Rep. Ch. 196, Sec. 2, L. 1967	12547-12552	Rep. Ch. 199, Sec. 101, L. 1965
11989-12001	Rep. Ch. 196, Sec. 2, L. 1967	12572	Rep. Ch. 199, Sec. 101, L. 1965
12002	Rep. Ch. 228, Sec. 6, L. 1969		
12003-12007	Rep. Ch. 196, Sec. 2, L. 1967		
12009-12014	Rep. Ch. 196, Sec. 2, L. 1967		
12016-12074	Rep. Ch. 196, Sec. 2, L. 1967		
12078	Rep. Ch. 196, Sec. 2, L. 1967		
12080	Rep. Ch. 196, Sec. 2, L. 1967		
12087-12174	Rep. Ch. 196, Sec. 2, L. 1967		
12179-12198	Rep. Ch. 196, Sec. 2, L. 1967		
12213-12218	Rep. Ch. 196, Sec. 2, L. 1967		

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This table shows the disposition made of the sections of the Revised Codes of 1907 since publication of Replacement Volume 1.

1907	1947	1907	1947
41-43	Rep. Ch. 194, Sec. 13, L. 1967	766-769	Rep. Ch. 75, Sec. 5, L. 1967
47	Unconstitutional, 246 F Supp 396	817, 818	Rep. Ch. 93, Sec. 44, L. 1969
53, 54	Rep. Ch. 194, Sec. 13, L. 1967	946	Rep. Ch. 26, Sec. 1, L. 1961
56	Rep. Ch. 18, Sec. 4, L. 1969	948-951	Rep. Ch. 26, Sec. 1, L. 1961
61-64	Rep. Ch. 1, Sec. 4, L. 1965	968	Rep. Ch. 262, Sec. 16, L. 1969
68, 69	Rep. Ch. 1, Sec. 4, L. 1965	972	Rep. Ch. 262, Sec. 16, L. 1969
71-74	Rep. Ch. 1, Sec. 4, L. 1965	1113	Rep. Ch. 266, Sec. 82, L. 1963
76	Rep. Ch. 1, Sec. 4, L. 1965	1132	Rep. Ch. 198, Sec. 2 and Ch. 213, Sec. 9, L. 1963
79	Rep. Ch. 1, Sec. 4, L. 1965	1147	Rep. Ch. 213, Sec. 9, L. 1963
81	Rep. Ch. 1, Sec. 4, L. 1965	1249-1250	Rep. Ch. 199, Sec. 101, L. 1965
158	Rep. Ch. 80, Sec. 14, L. 1961	1259	Rep. Ch. 199, Sec. 101, L. 1965
169	Rep. Ch. 177, Sec. 51, L. 1965	1260, 1261	Rep. Ch. 266, Sec. 82, L. 1963
172	Rep. Ch. 147, Sec. 242, L. 1963	1265	Rep. Ch. 266, Sec. 82, L. 1963
177	Rep. Ch. 94, Sec. 5, L. 1969	1267	Rep. Ch. 266, Sec. 82, L. 1963
180	Rep. Ch. 147, Sec. 242, L. 1963	1270	Rep. Ch. 266, Sec. 82, L. 1963
189	Rep. Ch. 177, Sec. 51, L. 1965	1273	Rep. Ch. 266, Sec. 82, L. 1963
195	Rep. Ch. 177, Sec. 51, L. 1965	1277-1280	Rep. Ch. 199, Sec. 101, L. 1965
196	Rep. Ch. 129, Sec. 1, L. 1963	1281	Rep. Ch. 266, Sec. 82, L. 1963
214	Rep. Ch. 129, Sec. 1, L. 1963	1282-1283	Rep. Ch. 199, Sec. 101, L. 1965
217	Rep. Ch. 177, Sec. 51, L. 1965	1284-1287	Rep. Ch. 266, Sec. 82, L. 1963
232-235	Rep. Ch. 97, Sec. 32, L. 1961	1288	Rep. Ch. 199, Sec. 101, L. 1965
243	Rep. Ch. 97, Sec. 32, L. 1961	1289	Rep. Ch. 266, Sec. 82, L. 1963
245-247	Rep. Ch. 80, Sec. 14, L. 1961	1290-1291	Rep. Ch. 199, Sec. 101, L. 1965
248	Rep. Ch. 271, Sec. 33, L. 1963	1292	Rep. Ch. 266, Sec. 82, L. 1963
249-253	Rep. Ch. 80, Sec. 14, L. 1961	1293	Rep. Ch. 199, Sec. 201, L. 1965
257-260	Rep. Ch. 80, Sec. 14, L. 1961	1294	Rep. Ch. 266, Sec. 82, L. 1963
262, 263	Rep. Ch. 80, Sec. 14, L. 1961	1298	Rep. Ch. 199, Sec. 101, L. 1965
265-267	Rep. Ch. 271, Sec. 33, L. 1963	1299-1301	Rep. Ch. 266, Sec. 82, L. 1963
297	Rep. Ch. 129, Sec. 1, L. 1963	1302	Rep. Ch. 199, Sec. 101, L. 1965
305	Rep. Ch. 177, Sec. 51, L. 1965	1305	Rep. Ch. 266, Sec. 82, L. 1963
308-311	Rep. Ch. 305, Sec. 2, L. 1967	1306	Rep. Ch. 190, Sec. 1, L. 1959
321	Rep. Ch. 264, Sec. 10-102, L. 1963	1308-1310	Rep. Ch. 190, Sec. 1, L. 1959
378-379	Rep. Ch. 177, Sec. 51, L. 1965	1474, 1475	Rep. Ch. 197, Sec. 223, L. 1967
380	Rep. Ch. 68, Sec. 10, L. 1967	1477	Rep. Ch. 197, Sec. 223, L. 1967
417	Rep. Ch. 68, Sec. 10, L. 1967	1481-1511	Rep. Ch. 197, Sec. 223, L. 1967
443-445	Rep. Ch. 80, Sec. 14, L. 1961	1559-1572	Rep. Ch. 197, Sec. 223, L. 1967
450-457	Rep. Ch. 368, Sec. 248, L. 1969	1585-1593	Rep. Ch. 338, Sec. 43, L. 1969
459-462	Rep. Ch. 368, Sec. 248, L. 1969	1797	Rep. Ch. 177, Sec. 51, L. 1965
464-466	Rep. Ch. 368, Sec. 248, L. 1969	2009-2024	Rep. Ch. 99, Sec. 43, L. 1969
469	Rep. Ch. 368, Sec. 248, L. 1969	2026	Rep. Ch. 99, Sec. 43, L. 1969
497-498	Rep. Ch. 368, Sec. 248, L. 1969	2238-2242	Rep. Ch. 280, Sec. 22, L. 1965
500-517	Rep. Ch. 368, Sec. 248, L. 1969	2243	Rep. Ch. 280, Sec. 1, L. 1965
519-530	Rep. Ch. 368, Sec. 248, L. 1969	2244	Rep. Ch. 280, Sec. 22, L. 1965
532-570	Rep. Ch. 368, Sec. 248, L. 1969	2245	Rep. Ch. 280, Sec. 1, L. 1965
572-580	Rep. Ch. 368, Sec. 248, L. 1969	2246	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963
582-594	Rep. Ch. 368, Sec. 248, L. 1969	2247	Rep. Ch. 280, Sec. 1, L. 1965
595-597	Rep. Ch. 194, Sec. 13, L. 1967		
598-641	Rep. Ch. 368, Sec. 248, L. 1969		

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1907	1947	1907	1947
2248	Rep. Ch. 280, Sec. 22, L. 1965	5314-5320	Rep. Ch. 264, Sec. 10-102, L. 1963
2249	Rep. Ch. 129, Sec. 1, L. 1963	5357-5359	Rep. Ch. 264, Sec. 10-102, L. 1963
2250	Rep. Ch. 280, Sec. 22, L. 1965	5695-5703	Rep. Ch. 264, Sec. 10-102, L. 1963
2251	Rep. Ch. 147, Sec. 242, L. 1963	5709	Rep. Ch. 264, Sec. 10-102, L. 1963
2252	Rep. Ch. 280, Sec. 22, L. 1965	5777	Rep. Ch. 264, Sec. 10-102, L. 1963
2255-2269	Rep. Ch. 280, Sec. 22, L. 1965	5780	Rep. Ch. 264, Sec. 10-102, L. 1963
2271-2276	Rep. Ch. 280, Sec. 22, L. 1965	5788-5799	Rep. Ch. 264, Sec. 10-102, L. 1963
2277	Rep. Ch. 147, Sec. 242, L. 1963	5803	Rep. Ch. 264, Sec. 10-102, L. 1963
2278	Rep. Ch. 280, Sec. 22, L. 1965	5813-5815	Rep. Ch. 32, Sec. 1, L. 1953
2279	Rep. Ch. 147, Sec. 242, L. 1963	5837-5934	Rep. Ch. 264, Sec. 10-102, L. 1963
2280-2281	Rep. Ch. 280, Sec. 22, L. 1965	5936-6037a	Rep. Ch. 264, Sec. 10-102, L. 1963
2725-2727	Rep. Ch. 249, Sec. 23, L. 1967	6056-6062	Rep. Ch. 264, Sec. 10-102, L. 1963
2877	S. M.R.Civ.P., Rule 4 D	6067	Rep. Ch. 200, Sec. 7, L. 1963
2884	Rep. Ch. 68, Sec. 10, L. 1967	6081, 6082	Rep. Ch. 264, Sec. 10-102, L. 1963
3063, 3064	Rep. Ch. 197, Sec. 12-109, L. 1965	6131-6135	Rep. Ch. 264, Sec. 10-102, L. 1963
3097	Rep. Ch. 68, Sec. 10, L. 1967	6285	Rep. Ch. 68, Sec. 10, L. 1967
3190	Rep. Ch. 196, Sec. 2, L. 1967	6351-6353	Rep. Ch. 110, Sec. 4, L. 1969
3219	Rep. Ch. 260, Sec. 12, L. 1967	6357, 6358	Rep. Ch. 110, Sec. 4, L. 1969
3237, 3238	Rep. Ch. 67, Sec. 11, L. 1967	6427	Rep. Ch. 13, Sec. 84, L. 1961
3608	Rep. Ch. 232, Sec. 12, L. 1963	6475	Rep. Ch. 7, Sec. 1, L. 1963
3614	Rep. Ch. 232, Sec. 12, L. 1963	6477	Rep. Ch. 13, Sec. 84, L. 1961
3618, 3619	Rep. Ch. 232, Sec. 12, L. 1963	6481	Rep. Ch. 13, Sec. 84, L. 1961
3622	Rep. Ch. 232, Sec. 12, L. 1963	6487, 6488	Rep. Ch. 13, Sec. 84, L. 1961
3638, 3639	Rep. Ch. 169, Sec. 4, L. 1963	6490-6492	Rep. Ch. 13, Sec. 84, L. 1961
3761-3771	Rep. Ch. 199, Sec. 1, L. 1961	6495-6496	Rep. Ch. 13, Sec. 84, L. 1961
3805-3811	Rep. Ch. 300, Sec. 143, L. 1967	6498	Rep. Ch. 13, Sec. 84, L. 1961
3816-3825	Rep. Ch. 300, Sec. 143, L. 1967	6505	Rep. Ch. 13, Sec. 84, L. 1961
3829-3854	Rep. Ch. 300, Sec. 143, L. 1967	6513	Rep. Ch. 6, Sec. 1, L. 1963
3855	Rep. Ch. 264, Sec. 10-102, L. 1963	6514	S. M.R.Civ.P., Rule 41(e)
3856	Rep. Ch. 300, Sec. 143, L. 1967	6515	Rep. Ch. 13, Sec. 84, L. 1961
3857	Rep. Ch. 264, Sec. 10-102, L. 1963	6516	Rep. Ch. 5, Sec. 1 and Ch. 189, Sec. 2, L. 1963
3858-3887	Rep. Ch. 300, Sec. 143, L. 1967	6518-6522	Rep. Ch. 13, Sec. 84, L. 1961
3889-3893	Rep. Ch. 300, Sec. 143, L. 1967	6524, 6525	Rep. Ch. 13, Sec. 84, L. 1961
3895-3900	Rep. Ch. 300, Sec. 143, L. 1967	6526	Rep. Ch. 189, Sec. 2, L. 1963
3902-3906	Rep. Ch. 300, Sec. 143, L. 1967	6528-6541	Rep. Ch. 13, Sec. 84, L. 1961
3908	Rep. Ch. 300, Sec. 143, L. 1967	6543, 6544	Rep. Ch. 13, Sec. 84, L. 1961
4069	Rep. Ch. 43, Sec. 4, L. 1959	6547	Rep. Ch. 13, Sec. 84, L. 1961
4221-4236	Rep. Ch. 198, Sec. 98, L. 1967	6549-6551	Rep. Ch. 13, Sec. 84, L. 1961
4303	Rep. Ch. 264, Sec. 10-102, L. 1963	6554-6564	Rep. Ch. 13, Sec. 84, L. 1961
4305-4307	Rep. Ch. 264, Sec. 10-102, L. 1963	6566-6568	Rep. Ch. 13, Sec. 84, L. 1961
4368	Rep. Ch. 129, Sec. 1 and Ch. 212, Sec. 3, L. 1963	6571-6573	Rep. Ch. 13, Sec. 84, L. 1961
4396	Rep. Ch. 93, Sec. 44, L. 1969	6576-6578	Rep. Ch. 13, Sec. 84, L. 1961
4403, 4404	Rep. Ch. 300, Sec. 143, L. 1967	6580-6589	Rep. Ch. 13, Sec. 84, L. 1961
4413-4420	Rep. Ch. 300, Sec. 143, L. 1967	6591	Rep. Ch. 13, Sec. 84, L. 1961
4479	Rep. Ch. 213, Sec. 3, L. 1959	6593	Rep. Ch. 13, Sec. 84, L. 1961
4492	Rep. Ch. 213, Sec. 3, L. 1959	6641	Rep. Ch. 13, Sec. 84, L. 1961
4494-4497	Rep. Ch. 213, Sec. 3, L. 1959	6690	Rep. Ch. 264, Sec. 10-102, L. 1963
4631-4633	Rep. Ch. 264, Sec. 10-102, L. 1963	6710	Rep. Ch. 13, Sec. 84, L. 1961
4858, 4859	Rep. Ch. 197, Sec. 12-109, L. 1965	6712-6714	Rep. Ch. 13, Sec. 84, L. 1961
5089, 5090	Rep. Ch. 264, Sec. 10-102, L. 1963	6717-6719	Rep. Ch. 13, Sec. 84, L. 1961
5092-5094a	Rep. Ch. 264, Sec. 10-102, L. 1963	6721	Rep. Ch. 13, Sec. 84, L. 1961
5115	Rep. Ch. 264, Sec. 10-102, L. 1963	6723-6725	Rep. Ch. 13, Sec. 84, L. 1961
5119-5121	Rep. Ch. 264, Sec. 10-102, L. 1963		
5130	Rep. Ch. 264, Sec. 10-102, L. 1963		
5177	Rep. Ch. 135, Sec. 2, L. 1967		

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1907	1947	1907	1947
6727, 6728	Rep. Ch. 13, Sec. 84, L. 1961	8522	Rep. Ch. 39, Sec. 1, L. 1969
6738	S. M.R.App.Civ.P.	8736	Rep. Ch. 197, Sec. 12-109, L. 1965
6742-6744	Rep. Ch. 13, Sec. 84, L. 1961	8745	Rep. Ch. 174, Sec. 3, L. 1963
6756-6758	Rep. Ch. 13, Sec. 84, L. 1961	8881	Rep. Ch. 52, Sec. 1, L. 1959
6762	Rep. Ch. 13, Sec. 84, L. 1961	8900, 8901	Rep. Ch. 196, Sec. 2, L. 1967
6763	S. M.R.Civ.P., Rule 52(a)	8912	Rep. Ch. 196, Sec. 2, L. 1967
6764	Rep. Ch. 13, Sec. 84, L. 1961	8914	Rep. Ch. 196, Sec. 2, L. 1967
6766-6768	S. M.R.Civ.P., Rule 52(b)	8916	Rep. Ch. 228, Sec. 6, L. 1969
6771-6773	Rep. Ch. 13, Sec. 84, L. 1961	8919-8935	Rep. Ch. 196, Sec. 2, L. 1967
6775-6777	Rep. Ch. 13, Sec. 84, L. 1961	9007-9025	Rep. Ch. 196, Sec. 2, L. 1967
6780-6782	Rep. Ch. 13, Sec. 84, L. 1961	9032-9150	Rep. Ch. 196, Sec. 2, L. 1967
6784	Rep. Ch. 13, Sec. 84, L. 1961	9151	Rep. Ch. 172, Sec. 3, L. 1961
6785	S. M.R.App.Civ.P.	9152-9157	Rep. Ch. 196, Sec. 2, L. 1967
6787-6792	S. M.R.App.Civ.P., Rules 9, 10, 25	9166	Rep. Ch. 196, Sec. 2, L. 1967
6796	Rep. Ch. 13, Sec. 84, L. 1961	9170-9172	Rep. Ch. 196, Sec. 2, L. 1967
6797	S. M.R.Civ.P., Rule 59(d)	9174-9213	Rep. Ch. 196, Sec. 2, L. 1967
6798	S. M.R.App.Civ.P., Rule 7	9214-9216	Rep. Ch. 228, Sec. 6, L. 1969
6799	S. M.R.App.Civ.P., Rules 9, 10, 25	9217-9272	Rep. Ch. 196, Sec. 2, L. 1967
6800	Rep. Ch. 13, Sec. 84, L. 1961	9275	Rep. Ch. 196, Sec. 2, L. 1967
6801	S. M.R.App.Civ.P., Rule 29	9291-9303	Rep. Ch. 196, Sec. 2, L. 1967
6802	Rep. Ch. 13, Sec. 84, L. 1961	9304	Rep. Ch. 228, Sec. 6, L. 1969
6806	S. M.R.App.Civ.P., Rules 9, 10, 25	9305-9309	Rep. Ch. 196, Sec. 2, L. 1967
7098	S. M.R.App.Civ.P., Rule 1	9311-9316	Rep. Ch. 196, Sec. 2, L. 1967
7099	S. M.R.App.Civ.P., Rule 5	9318-9339	Rep. Ch. 196, Sec. 2, L. 1967
7100	S. M.R.App.Civ.P., Rules 4, 6	9341-9344	Rep. Ch. 196, Sec. 2, L. 1967
7101	S. M.R.App.Civ.P., Rule 6	9346-9422	Rep. Ch. 196, Sec. 2, L. 1967
7102-7105	Rep. Ch. 13, Sec. 84, L. 1961	9440-9481	Rep. Ch. 196, Sec. 2, L. 1967
7106	S. M.R.App.Civ.P., Rule 7	9486-9505	Rep. Ch. 196, Sec. 2, L. 1967
7107	S. M.R.App.Civ.P., Rules 6, 7	9520-9525	Rep. Ch. 196, Sec. 2, L. 1967
7109	S. M.R.App.Civ.P., Rule 7	9527-9555	Rep. Ch. 196, Sec. 2, L. 1967
7110	S. M.R.App.Civ.P., Rule 6	9584-9696	Rep. Ch. 196, Sec. 2, L. 1967
7111	S. M.R.App.Civ.P., Rule 13	9711-9713	Rep. Ch. 196, Sec. 2, L. 1967
7113	S. M.R.App.Civ.P., Rule 1	9716-9720	Rep. Ch. 199, Sec. 101, L. 1965
7115	S. M.R.App.Civ.P., Rules 9, 10, 25	9721	Rep. Ch. 266, Sec. 82, L. 1963
7116	S. M.R.App.Civ.P., Rules 3, 4, 6, 9-11, 25	9722-9724	Rep. Ch. 199, Sec. 101, L. 1965
7117	S. M.R.App.Civ.P., Rule 12	9725-9727	Rep. Ch. 266, Sec. 82, L. 1963
7118	S. M.R.App.Civ.P., Rule 14	9728-9731	Rep. Ch. 199, Sec. 101, L. 1965
7119	S. M.R.App.Civ.P., Rule 15	9732	Rep. Ch. 15, Sec. 1, L. 1959
7120	S. M.R.App.Civ.P., Rule 16	9733-9735	Rep. Ch. 266, Sec. 82, L. 1963
7137-7139	Rep. Ch. 13, Sec. 84, L. 1961	9736	Rep. Ch. 199, Sec. 101, L. 1965
7141	Rep. Ch. 13, Sec. 84, L. 1961	9739-9740	Rep. Ch. 199, Sec. 101, L. 1965
7145-7148	Rep. Ch. 13, Sec. 84, L. 1961	9741	Rep. Ch. 266, Sec. 82, L. 1963
7151	Rep. Ch. 13, Sec. 84, L. 1961	9742-9743	Rep. Ch. 199, Sec. 101, L. 1965
7159	Rep. Ch. 13, Sec. 84, L. 1961	9744	Rep. Ch. 147, Sec. 242 and Ch. 266, Sec. 82, L. 1963
7187	Rep. Ch. 13, Sec. 84, L. 1961	9745	Rep. Ch. 199, Sec. 101, L. 1965
7323-7329	Rep. Ch. 300, Sec. 143, L. 1967	9748	Rep. Ch. 266, Sec. 82, L. 1963
7640	Rep. Ch. 272, Sec. 1, L. 1969	9779	Rep. Ch. 266, Sec. 82, L. 1963
7976	Rep. Ch. 13, Sec. 84, L. 1961	9780	Rep. Ch. 199, Sec. 101, L. 1965
7978	Rep. Ch. 154, Sec. 1, L. 1959	9791	Rep. Ch. 266, Sec. 82, L. 1963
7999-8014	Rep. Ch. 13, Sec. 84, L. 1961	9794	Rep. Ch. 199, Sec. 101, L. 1965
8042-8048	Rep. Ch. 13, Sec. 84, L. 1961	9795	Rep. Ch. 266, Sec. 82, L. 1963
8377	Rep. Ch. 314, Sec. 14, L. 1969	9797	Rep. Ch. 199, Sec. 101, L. 1965
8488	Rep. Ch. 314, Sec. 14, L. 1969	9798-9800	Rep. Ch. 266, Sec. 82, L. 1963
		9805-9814	Rep. Ch. 199, Sec. 101, L. 1965
		9815-9817	Rep. Ch. 266, Sec. 82, L. 1963

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1909			Ch.	Sec.	Herein
Ch.	Sec.	Herein			
6	1	Rep. Ch. 368, Sec. 248, L. 1969	131	1-6	Rep. Ch. 199, Sec. 101, L. 1965
8	1	Rep. Ch. 190, Sec. 1, L. 1959	140	1	Rep. Ch. 300, Sec. 143, L. 1967
9	1	Rep. Ch. 197, Sec. 12-109, L. 1965	147	18	Rep. Ch. 280, Sec. 1, L. 1965
20	1	Rep. Ch. 196, Sec. 15, L. 1965			
23	1	Rep. Ch. 266, Sec. 82, L. 1963	1911		
	2	Rep. Ch. 199, Sec. 101, L. 1965	Ch.	Sec.	Herein
	3	Rep. Ch. 266, Sec. 82, L. 1963	6	3	Rep. Ch. 67, Sec. 11 and Ch. 68, Sec. 10, L. 1967
30	1	Rep. Ch. 266, Sec. 82, L. 1963	20	1	Rep. Ch. 266, Sec. 82, L. 1963
33	3	Rep. Ch. 197, Sec. 12-109, L. 1965	32	1	Rep. Ch. 199, Sec. 101, L. 1965
43	1	Rep. Ch. 280, Sec. 22, L. 1965	34	1-4	Rep. Ch. 99, Sec. 43, L. 1969
45	3	Rep. Ch. 1, Sec. 4, L. 1965		6-9	Rep. Ch. 99, Sec. 43, L. 1969
47	1	S. M.R.App.Civ.P., Rules 3, 4, 6, 9-11, 25		10	Rep. Ch. 160, Sec. 24, L. 1965
82	1	Rep. Ch. 264, Sec. 10-102, L. 1963		11	Rep. Ch. 99, Sec. 43, L. 1969
84	1	Rep. Ch. 368, Sec. 248, L. 1969		13-16	Rep. Ch. 99, Sec. 43, L. 1969
86	2	Rep. Ch. 81, Sec. 3, L. 1961		18-22	Rep. Ch. 99, Sec. 43, L. 1969
92	1	Rep. Ch. 196, Sec. 15, L. 1965		23	Rep. Ch. 160, Sec. 24, L. 1965
94	1-2	Rep. Ch. 300, Sec. 143, L. 1967		25-31	Rep. Ch. 99, Sec. 43, L. 1969
99	1-3	Rep. Ch. 368, Sec. 248, L. 1969	38	2	Rep. Ch. 194, Sec. 13, L. 1967
101	1	Rep. Ch. 198, Sec. 98, L. 1967	52	1	Rep. Ch. 264, Sec. 10-102, L. 1963
106	1-2	Rep. Ch. 300, Sec. 143, L. 1967	66	1-2	Rep. Ch. 197, Sec. 223, L. 1967
	4-5	Rep. Ch. 300, Sec. 143, L. 1967	93	2	Rep. Ch. 129, Sec. 1, L. 1963
108	1-16	Rep. Ch. 32, Sec. 1, L. 1953	113	1-7	Rep. Ch. 368, Sec. 248, L. 1969
109	1-2	Rep. Ch. 300, Sec. 143, L. 1967		12	Rep. Ch. 368, Sec. 248, L. 1969
117	1	Rep. Ch. 197, Sec. 223, L. 1967		17-24	Rep. Ch. 368, Sec. 248, L. 1969
120	4-5	Rep. Ch. 89, Sec. 4, L. 1961		26	Rep. Ch. 368, Sec. 248, L. 1969
				29-30	Rep. Ch. 368, Sec. 248, L. 1969

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113	32	Rep. Ch. 368, Sec. 248, L. 1969	148	7	Rep. Ch. 229, Sec. 14, L. 1967
	35-39	Rep. Ch. 368, Sec. 248, L. 1969		20-21	Rep. Ch. 229, Sec. 14, L. 1967
115	1-3	Rep. Ch. 300, Sec. 143, L. 1967	1913		
120	10-11	Rep. Ch. 99, Sec. 43, L. 1969	Ch.	Sec.	Herein
	67	Rep. Ch. 188, Sec. 4, L. 1959	11	1	Rep. Ch. 199, Sec. 101, L. 1965
	83	Rep. Ch. 188, Sec. 4, L. 1959	12	1-2	Rep. Ch. 361, Sec. 7, L. 1969
123	1-4	Rep. Ch. 280, Sec. 22, L. 1965	15	1	Rep. Ch. 197, Sec. 223, L. 1967
125	1	Rep. Ch. 199, Sec. 101, L. 1965	21	1	Rep. Ch. 196, Sec. 2, L. 1967
	2-5	Rep. Ch. 266, Sec. 82, L. 1963		3	Rep. Ch. 196, Sec. 2, L. 1967
	6-7	Rep. Ch. 199, Sec. 101, L. 1965	37	1	Rep. Ch. 1, Sec. 4, L. 1965
	8	Rep. Ch. 266, Sec. 82, L. 1963	45	1	Rep. Ch. 32, Sec. 1, L. 1953
	9	Rep. Ch. 199, Sec. 101, L. 1965	57	1	Rep. Ch. 199, Sec. 101, L. 1965
	10	Rep. Ch. 189, Sec. 2, L. 1959		2	Rep. Ch. 266, Sec. 82, L. 1963
	11-13	Rep. Ch. 213, Sec. 9, L. 1963		3	Rep. Ch. 199, Sec. 101, L. 1965
	14	Rep. Ch. 266, Sec. 82, L. 1963		4-5	Rep. Ch. 266, Sec. 82, L. 1963
	15	Rep. Ch. 199, Sec. 101, L. 1965	62	1	Rep. Ch. 129, Sec. 1, L. 1963
128	1	Rep. Ch. 129, Sec. 1, L. 1963 and Ch. 280, Sec. 22, L. 1965	72	Ch. I 2-7	Rep. Ch. 197, Sec. 12-109, L. 1965
				Ch. II 1-4	Rep. Ch. 197, Sec. 12-109, L. 1965
130	1-5	Rep. Ch. 307, Sec. 27, L. 1967		Ch. III 2-14	Rep. Ch. 197, Sec. 12-109, L. 1965
	7-9	Rep. Ch. 307, Sec. 27, L. 1967		Ch. IV 1-16	Rep. Ch. 197, Sec. 12-109, L. 1965
	10	Rep. Ch. 122, Sec. 12, L. 1965		18-19	Rep. Ch. 197, Sec. 12-109, L. 1965
	11-12	Rep. Ch. 307, Sec. 27, L. 1967	Ch. V	1-5	Rep. Ch. 197, Sec. 12-109, L. 1965
	15-17	Rep. Ch. 307, Sec. 27, L. 1967	Ch. VI	14	Rep. Ch. 197, Sec. 12-109, L. 1965
139	1	Rep. Ch. 112, Sec. 15, L. 1963		16	Rep. Ch. 197, Sec. 12-109, L. 1965
	2	Rep. Ch. 122, Sec. 15 and Ch. 266, Sec. 82, L. 1963	74	1-5	Rep. Ch. 368, Sec. 248, L. 1969
	4-7	Rep. Ch. 112, Sec. 15, L. 1963		7	Rep. Ch. 368, Sec. 248, L. 1969
	8-9	Rep. Ch. 112, Sec. 15 and Ch. 213, Sec. 9, L. 1963		12	Rep. Ch. 368, Sec. 248, L. 1969
	10-12	Rep. Ch. 112, Sec. 15, L. 1963		15	Rep. Ch. 368, Sec. 248, L. 1969
				17	Rep. Ch. 368, Sec. 248, L. 1969
				19-24	Rep. Ch. 368, Sec. 248, L. 1969
148	2	Rep. Ch. 229, Sec. 14, L. 1967		26	Rep. Ch. 368, Sec. 248, L. 1969
	3	Rep. Ch. 129, Sec. 1, L. 1963		29-30	Rep. Ch. 368, Sec. 248, L. 1969

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74	32	Rep. Ch. 368, Sec. 248, L. 1969	20	1	Rep. Ch. 197, Sec. 12-109, L. 1965
	35-40	Rep. Ch. 368, Sec. 248, L. 1969	22	1	Rep. Ch. 37, Sec. 6, L. 1917
76	202	Rep. Ch. 93, Sec. 44, L. 1969	40	1	Rep. Ch. 202, Sec. 3, L. 1959
	1000-1007	Rep. Ch. 26, Sec. 1, L. 1961	45	1-10	Rep. Ch. 260, Sec. 12, L. 1967
	1106-1107	Rep. Ch. 262, Sec. 16, L. 1969	55	1	Rep. Ch. 196, Sec. 15, L. 1965
	1602	Rep. Ch. 366, Sec. 27, L. 1969	58	1-3	Rep. Ch. 300, Sec. 143, L. 1967
	1812	Rep. Ch. 79, Sec. 1, L. 1961	77	1	Rep. Ch. 129, Sec. 1, L. 1963
83	1-4	Rep. Ch. 99, Sec. 43, L. 1969	88	1-2	Rep. Ch. 300, Sec. 143, L. 1967
	6-9	Rep. Ch. 99, Sec. 43, L. 1969	94	1	Rep. Ch. 264, Sec. 10-102, L. 1963
	10	Rep. Ch. 160, Sec. 24, L. 1965	96	2(c-d)	Rep. Ch. 177, Sec. 51, L. 1965
	12	Rep. Ch. 160, Sec. 24, L. 1965		16(j)	Rep. Ch. 197, Sec. 1, L. 1959
	15-21	Rep. Ch. 99, Sec. 43, L. 1969		23	Rep. Ch. 147, Sec. 242, L. 1963
	24	Rep. Ch. 160, Sec. 24 L. 1965		40	Rep. Ch. 233, Sec. 3, L. 1969
85	1-24	Rep. Ch. 251, Sec. 28, L. 1961		50-51	Rep. Ch. 341, Sec. 30, L. 1969
86	1-11	Rep. Ch. 264, Sec. 10-102, L. 1963		53-54	Rep. Ch. 341, Sec. 30, L. 1969
	15-16	Rep. Ch. 264, Sec. 10-102, L. 1963	110	1-20	Rep. Ch. 368, Sec. 248, L. 1969
87	1-3	Rep. Ch. 198, Sec. 98, L. 1967	113	2	93-6204, 93-6205, 93-6209 to 93-6211; in part Rep. Ch. 8, L. 1945 and Ch. 189, Sec. 2, L. 1963
93	1	Rep. Ch. 199, Sec. 101, L. 1965			
118	1	Rep. Ch. 129, Sec. 1 and Ch. 147, Sec. 242, L. 1963	114	1	Rep. Ch. 260, Sec. 12, L. 1967
120	1-9	Rep. Ch. 197, Sec. 223, L. 1967	122	1-36	Rep. Ch. 368, Sec. 248, L. 1969
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	1-10	Rep. Ch. 368, Sec. 248, L. 1969	128	1	Rep. Ch. 264, Sec. 10-102, L. 1963
	13-21	Rep. Ch. 368, Sec. 248, L. 1969	133	1	Rep. Ch. 32, Sec. 1, L. 1953
	23-29	Rep. Ch. 368, Sec. 248, L. 1969	135	1	Rep. Ch. 13, Sec. 84, L. 1961
	31-33	Rep. Ch. 368, Sec. 248, L. 1969	141	Ch. I 2-7	Rep. Ch. 197, Sec. 12-109, L. 1965
	34	Rep. Ch. 156, Sec. 11, L. 1965		Ch. II 1-4	Rep. Ch. 197, Sec. 12-109, L. 1965
	35-38	Rep. Ch. 368, Sec. 248, L. 1969		Ch. III 12-14	Rep. Ch. 197, Sec. 12-109, L. 1965
1915				Ch. IV 1-16	Rep. Ch. 197, Sec. 12-109, L. 1965
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1	1-5	Rep. Ch. 1, Sec. 4, L. 1965	Ch. V	1-5	Rep. Ch. 197, Sec. 12-109, L. 1965
12	1-4	Rep. Ch. 368, Sec. 248, L. 1969	Ch. VI	2-10	Rep. Ch. 197, Sec. 12-109, L. 1965

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141	12-14	Rep. Ch. 197, Sec. 12-109, L. 1965	149	1	Rep. Ch. 300, Sec. 143, L. 1967
	16	Rep. Ch. 197, Sec. 12-109, L. 1965	152	111	Rep. Ch. 67, Sec. 11, L. 1967
146	1-5	Rep. Ch. 197, Sec. 223, L. 1967	154	1-49	Rep. Ch. 264, Sec. 10-102, L. 1963
1917				56-59	Rep. Ch. 264, Sec. 10-102, L. 1963
Ch.	Sec.	Herein		62	Rep. Ch. 264, Sec. 10-102, L. 1963
2	1	Rep. Ch. 199, Sec. 101, L. 1965	155	1-21	Rep. Ch. 368, Sec. 248, L. 1969
9	1	Rep. Ch. 135, Sec. 2, L. 1967	158	4	Rep. Ch. 138, Sec. 5, L. 1967
19	1-2	Rep. Ch. 99, Sec. 43, L. 1969	160	1-4	Rep. Ch. 18, Sec. 12, L. 1967
26	1	Rep. Ch. 197, Sec. 223, L. 1967	172	Ch. I 2-7	Rep. Ch. 197, Sec. 12-109, L. 1965
37	1	S. M.R.Civ.P., Rule 4 D		Ch. II 1-4	Rep. Ch. 197, Sec. 12-109, L. 1965
	2-3	Rep. Ch. 189, Sec. 2, L. 1963		Ch. III 12-13	Rep. Ch. 197, Sec. 12-109, L. 1965
	4-5	S. M.R.Civ.P., Rule 4 D		Ch. IV 1-13	Rep. Ch. 197, Sec. 12-109, L. 1965
38	1	Rep. Ch. 368, Sec. 248, L. 1969		15-16	Rep. Ch. 197, Sec. 12-109, L. 1965
44	1	Unconstitutional, 246 F Supp 396		Ch. XII 1-7	Rep. Ch. 197, Sec. 12-109, L. 1965
46	1-6	Rep. Ch. 271, Sec. 33, L. 1963		9-26	Rep. Ch. 197, Sec. 12-109, L. 1965
51	6	Rep. Ch. 93, Sec. 44, L. 1969	173	38	Rep. Ch. 56, Sec. 1, L. 1969
57	1	Rep. Ch. 199, Sec. 101, L. 1965		51	26-701
60	1	Rep. Ch. 199, Sec. 101, L. 1965		52-53	Rep. Ch. 38, Sec. 2, L. 1963
63	1-6	Rep. Ch. 197, Sec. 12-109, L. 1965		54	26-704
90	13-14	Rep. Ch. 147, Sec. 242, L. 1963		55	26-705
	17	Rep. Ch. 147, Sec. 242, L. 1963		57	Rep. Ch. 38, Sec. 2, L. 1963
101	1	Rep. Ch. 368, Sec. 248, L. 1969	1919		
103	1	Rep. Ch. 197, Sec. 223, L. 1967	Ch.	Sec.	Herein
106	1	Rep. Ch. 197, Sec. 12-109, L. 1965	2	1	Rep. Ch. 300, Sec. 143, L. 1967
115	1	Rep. Ch. 1, Sec. 4, L. 1965	8	1	Rep. Ch. 196, Sec. 2, L. 1967
116	1	Rep. Ch. 129, Sec. 1, L. 1963	14	1-3	Rep. Ch. 198, Sec. 98, L. 1967
123	1	Rep. Ch. 127, Sec. 1, L. 1967	27	1-10	Rep. Ch. 197, Sec. 223, L. 1967
124	10	Rep. Ch. 184, Sec. 8, L. 1961	29	1	Rep. Ch. 368, Sec. 248, L. 1969
	12	Rep. Ch. 184, Sec. 8, L. 1961	35	3-5	Rep. Ch. 110, Sec. 4, L. 1969
126	1-3	Rep. Ch. 197, Sec. 223, L. 1967	36	1-13	Rep. Ch. 18, Sec. 12, L. 1967
134	1	Rep. Ch. 368, Sec. 248, L. 1969	37	1	Rep. Ch. 300, Sec. 143, L. 1967
137	1-4	Rep. Ch. 260, Sec. 12, L. 1967	41	1	Rep. Ch. 199, Sec. 101, L. 1965
			52	1	Rep. Ch. 129, Sec. 1, L. 1963

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58	1	Rep. Ch. 368, Sec. 248, L. 1969	160	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965
76	1	Rep. Ch. 197, Sec. 223, L. 1967	162	1	Rep. Ch. 266, Sec. 82, L. 1963
86	1-2	Rep. Ch. 107, Sec. 18, L. 1965		2-6	Rep. Ch. 199, Sec. 101, L. 1965
97	1-4	Rep. Ch. 368, Sec. 248, L. 1969	177	1	Rep. Ch. 13, Sec. 84, L. 1961
101	1	Rep. Ch. 266, Sec. 82, L. 1963	183	1	Rep. Ch. 264, Sec. 10-102, L. 1963
	2-3	Rep. Ch. 199, Sec. 101, L. 1965	189	1	Rep. Ch. 300, Sec. 143, L. 1967
	4	Rep. Ch. 266, Sec. 82, L. 1963	197	1	Rep. Ch. 56, Sec. 1, L. 1969
	6-10	Rep. Ch. 266, Sec. 82, L. 1963	205	2-5	Rep. Ch. 158, Sec. 11, L. 1959
	11	Rep. Ch. 199, Sec. 101, L. 1965		8	Rep. Ch. 147, Sec. 242, L. 1963
	12-14	Rep. Ch. 266, Sec. 82, L. 1963		10	Rep. Ch. 158, Sec. 11, L. 1959
	15	Rep. Ch. 199, Sec. 101, L. 1965	226	14	Rep. Ch. 194, Sec. 13, L. 1967
	16	Rep. Ch. 266, Sec. 82, L. 1963	<hr/>		
	18-28	Rep. Ch. 199, Sec. 101, L. 1965	1919 Ex. Sess.		
	29	Rep. Ch. 266, Sec. 82, L. 1963	Ch.	Sec.	Herein
106	1-14	Rep. Ch. 107, Sec. 18, L. 1965	4	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965
107	1-2	Rep. Ch. 202, Sec. 3, L. 1959	5	1-13	S. Ch. 137, L. 1949
109	1-3	Rep. Ch. 129, Sec. 1, L. 1963	15	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965
112	1	Rep. Ch. 129, Sec. 1, L. 1963	26	1	Rep. Ch. 189, Sec. 2, L. 1959
119	1-4	Rep. Ch. 300, Sec. 143, L. 1967	<hr/>		
121	1-2	Rep. Ch. 300, Sec. 143, L. 1967	1921		
122	1	Rep. Ch. 129, Sec. 1, L. 1963	Ch.	Sec.	Herein
125	1-2	Rep. Ch. 300, Sec. 143, L. 1967	6	1	Rep. Ch. 194, Sec. 13, L. 1967
126	1	Rep. Ch. 129, Sec. 1, L. 1963	9	1	Rep. Ch. 80, Sec. 14, L. 1961
130	1	Rep. Ch. 368, Sec. 248, L. 1969	35	1	Rep. Ch. 68, Sec. 10, L. 1967
131	1	Rep. Ch. 129, Sec. 1, L. 1963	36	1	S. M.R.App.Civ.P., Rules 9, 10, 25
143	1-5	Rep. Ch. 197, Sec. 12-109, L. 1965	42	1	Rep. Ch. 199, Sec. 101, L. 1965
146	1	Rep. Ch. 264, Sec. 10-102, L. 1963	43	1	Rep. Ch. 199, Sec. 101, L. 1965
152	1	Rep. Ch. 264, Sec. 10-102, L. 1963	56	1-11	Rep. Ch. 300, Sec. 143, L. 1967
154	1	Rep. Ch. 202, Sec. 3, L. 1959	61	1	Rep. Ch. 266, Sec. 82, L. 1963
155	1	Rep. Ch. 160, Sec. 24, L. 1965	62	1	Rep. Ch. 199, Sec. 101, L. 1965
	4	Rep. Ch. 307, Sec. 27, L. 1967	65	1	Rep. Ch. 79, Sec. 1, L. 1961
157	1-3	Rep. Ch. 197, Sec. 223, L. 1967	68	1	Rep. Ch. 266, Sec. 82, L. 1963
			74	1	Rep. Ch. 99, Sec. 43, L. 1969
			80	1	Rep. Ch. 300, Sec. 143, L. 1967

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84	1	Rep. Ch. 18, Sec. 12, L. 1967	235	1	Rep. Ch. 368, Sec. 248, L. 1969
85	1	Rep. Ch. 251, Sec. 28, L. 1961	246	1-4	Rep. Ch. 368, Sec. 248, L. 1969
88	1	Rep. Ch. 368, Sec. 248, L. 1969	256	1-3	Rep. Ch. 307, Sec. 27, L. 1967
	3	Rep. Ch. 368, Sec. 248, L. 1969	262	32	Rep. Ch. 147, Sec. 242, L. 1963
95	1	Rep. Ch. 300, Sec. 143, L. 1967		33	Rep. Ch. 93, Sec. 44, L. 1969
108	2	Rep. Ch. 80, Sec. 14, L. 1961	263	1	Rep. Ch. 300, Sec. 143, L. 1967
124	1	Rep. Ch. 197, Sec. 223, L. 1967	264	1-3	Rep. Ch. 300, Sec. 143, L. 1967
131	1	Rep. Ch. 80, Sec. 14, L. 1961	<hr/>		
133	1	Rep. Ch. 190, Sec. 1, L. 1959	1921 Ex. Sess.		
140	1	Rep. Ch. 99, Sec. 43, L. 1969	Ch.	Sec.	Herein
	3	Rep. Ch. 99, Sec. 43, L. 1969	1	1	Rep. Ch. 156, Sec. 11, L. 1965
146	1-2	S. Ch. 137, L. 1949	10	1-10	Rep. Ch. 197, Sec. 12-109, L. 1965
147	21	Rep. Ch. 136, Sec. 1, L. 1961		13-16	Rep. Ch. 197, Sec. 12-109, L. 1965
163	1	Rep. Ch. 158, Sec. 11, L. 1959		18	Rep. Ch. 197, Sec. 12-109, L. 1965
175	1	Rep. Ch. 122, Sec. 12, L. 1965	12	2	Rep. Ch. 75, Sec. 1, L. 1961
186	1	Rep. Ch. 213, Sec. 9, L. 1963	<hr/>		
192	2	Rep. Ch. 194, Sec. 13, L. 1967	1923		
	4	Rep. Ch. 194, Sec. 13, L. 1967	Ch.	Sec.	Herein
195	1-23	Rep. Ch. 250, Sec. 24, L. 1963	22	1	Rep. Ch. 314, Sec. 14, L. 1969
197	7	Rep. Ch. 177, Sec. 51, L. 1965	24	1-6	Rep. Ch. 197, Sec. 223, L. 1967
210	2	Rep. Ch. 13, Sec. 84, L. 1961	32	1	Rep. Ch. 264, Sec. 10-102, L. 1963
225	1	Rep. Ch. 13, Sec. 84, L. 1961	42	1	Rep. Ch. 199, Sec. 101, L. 1965
	2	S. M.R.App.Civ.P.	43	1-2	Rep. Ch. 368, Sec. 248, L. 1969
	3-4	S. M.R.App.Civ.P., Rules 9, 10, 25	49	1	Rep. Ch. 127, Sec. 1, L. 1967
	7	Rep. Ch. 13, Sec. 84, L. 1961	55	1	Rep. Ch. 189, Sec. 2, L. 1963
	8	S. M.R.Civ.P., Rule 59(d)	56	1	Rep. Ch. 260, Sec. 12, L. 1967
	9	S. M.R.App.Civ.P., Rules 9, 10, 25	61	1	Rep. Ch. 44, Sec. 7, L. 1961
	10	S. M.R.App.Civ.P., Rule 1	77	17	Rep. Ch. 56, Sec. 1, L. 1969
	11	S. M.R.App.Civ.P., Rule 5		20-21	Rep. Ch. 38, Sec. 2, L. 1963
	13-14	S. M.R.App.Civ.P., Rules 9, 10, 25	100	1	Rep. Ch. 264, Sec. 10-102, L. 1963
	15-18	Rep. Ch. 196, Sec. 2, L. 1967	104	1	Rep. Ch. 75, Sec. 1, L. 1961
229	1-2	Rep. Ch. 177, Sec. 51, L. 1965	110	1-8	Rep. Ch. 147, Sec. 242, L. 1963
	3-4	Rep. Ch. 68, Sec. 10, L. 1967	112	1-3	Rep. Ch. 198, Sec. 98, L. 1967
			133	1-2	Rep. Ch. 368, Sec. 248, L. 1969

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143	1	Rep. Ch. 264, Sec. 10-102, L. 1963	126	1-2	Rep. Ch. 199, Sec. 101, L. 1965
145	1	Rep. Ch. 67, Sec. 11 and Ch. 68, Sec. 10, L. 1967		3	Rep. Ch. 266, Sec. 82, L. 1963
148	1	Rep. Ch. 264, Sec. 10-102, L. 1963	128	1	Rep. Ch. 197, Sec. 12-109, L. 1965
151	1-3	Rep. Ch. 368, Sec. 248, L. 1969	129	1	Rep. Ch. 197, Sec. 12-109, L. 1965
164	1-8	Rep. Ch. 310, Sec. 1, L. 1969	144	1-2	Rep. Ch. 147, Sec. 242, L. 1963
1925			145	1	Rep. Ch. 264, Sec. 10-102, L. 1963
Ch.	Sec.	Herein	146	1	S. M.R.App.Civ.P., Rules 9, 10, 25
1	1-3	Rep. Ch. 305, Sec. 2, L. 1967	148	1	Unconstitutional, 134 M 355, 332 P 2d 501
4	1	Rep. Ch. 196, Sec. 2, L. 1967	149	1	Rep. Ch. 266, Sec. 82, L. 1963
12	1-2	Rep. Ch. 368, Sec. 248, L. 1969	159	1	Rep. Ch. 156, Sec. 11, L. 1965
13	1	Rep. Ch. 197, Sec. 12-109, L. 1965	185	1-4	S. Ch. 137, L. 1949
15	1	Rep. Ch. 368, Sec. 248, L. 1969	1927		
16	1	Rep. Ch. 368, Sec. 248, L. 1969	Ch.	Sec.	Herein
19	1	S. M.R.App.Civ.P., Rules 9, 10, 25	3	1	Rep. Ch. 368, Sec. 248, L. 1969
27	1-2	Rep. Ch. 300, Sec. 143, L. 1967	4	1	Rep. Ch. 189, Sec. 2, L. 1959
28	1-2	Rep. Ch. 300, Sec. 143, L. 1967	5	1	Rep. Ch. 300, Sec. 143, L. 1967
34	1	Rep. Ch. 197, Sec. 223, L. 1967	7	1	Rep. Ch. 368, Sec. 248, L. 1969
39	1	S. M.R.App.Civ.P., Rule 5	8	1-7	Rep. Ch. 228, Sec. 8, L. 1967
40	1-2	Rep. Ch. 250, Sec. 24, L. 1963	14	1	Rep. Ch. 368, Sec. 248, L. 1969
41	1	Rep. Ch. 127, Sec. 1, L. 1967	17	1, 2	Rep. Ch. 369, Sec. 20, L. 1969
55	1	Rep. Ch. 300, Sec. 143, L. 1967	18	1	Rep. Ch. 197, Sec. 12-109, L. 1965
58	1	Rep. Ch. 368, Sec. 248, L. 1969		2	Rep. Ch. 42, Sec. 2, L. 1961
64	1	Rep. Ch. 368, Sec. 248, L. 1969		3	Rep. Ch. 197, Sec. 12-109, L. 1965
88	1	Rep. Ch. 79, Sec. 1, L. 1961	19	1	Rep. Ch. 369, Sec. 20, L. 1969
106	1	Rep. Ch. 194, Sec. 13, L. 1967		3	Rep. Ch. 369, Sec. 20, L. 1969
109	6	Rep. Ch. 97, Sec. 32, L. 1961		4-8	Rep. Ch. 369, Sec. 20, L. 1969
113	14	Rep. Ch. 256, Sec. 5, L. 1965		9-12	Rep. Ch. 369, Sec. 20, L. 1969
114	1	Rep. Ch. 75, Sec. 5, L. 1967		13	Rep. Ch. 197, Sec. 12-109, L. 1965
115	1	Rep. Ch. 99, Sec. 43, L. 1969		15	Rep. Ch. 369, Sec. 20, L. 1969
116	1	Rep. Ch. 264, Sec. 10-102, L. 1963	20	1	Rep. Ch. 99, Sec. 43, L. 1969
118	1	Rep. Ch. 368, Sec. 248, L. 1969	31	1	Rep. Ch. 300, Sec. 143, L. 1967
			51	1	Rep. Ch. 147, Sec. 242, L. 1963

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59	19	Rep. Ch. 56, Sec. 1, L. 1969	149	4	Rep. Ch. 271, Sec. 33, L. 1963
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	27	Rep. Ch. 38, Sec. 2, L. 1963	152	1-4	Rep. Ch. 15, Sec. 1, L. 1959
60	10	Rep. Ch. 93, Sec. 44, L. 1969	<hr/>		
	30	Rep. Ch. 257, Sec. 10, L. 1965	1929		
	74	Rep. Ch. 184, Sec. 8, L. 1961	Ch.	Sec.	Herein
	77	Rep. Ch. 184, Sec. 8, L. 1961	21	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965
62	1	Rep. Ch. 368, Sec. 248, L. 1969	25	1	Rep. Ch. 368, Sec. 248, L. 1969
68	1	Rep. Ch. 338, Sec. 43, L. 1969	27	8	Rep. Ch. 177, Sec. 51, L. 1965
89	59	Rep. Ch. 129, Sec. 1, L. 1963	34	1	Rep. Ch. 368, Sec. 248, L. 1969
	80-81	Rep. Ch. 264, Sec. 10-102, L. 1963	59	1	Rep. Ch. 197, Sec. 12-109, L. 1965
	89-90	Rep. Ch. 264, Sec. 10-102, L. 1963	60	1-2	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
	116	Rep. Ch. 264, Sec. 10-102, L. 1963	67	1	Rep. Ch. 368, Sec. 248, L. 1969
90	1	Rep. Ch. 129, Sec. 1, L. 1963	70	4-5	Rep. Ch. 147, Sec. 242, L. 1963
98	1	Rep. Ch. 368, Sec. 248, L. 1969		10	Rep. Ch. 147, Sec. 242, L. 1963
102	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965	73	2	Rep. Ch. 307, Sec. 27, L. 1967
103	12	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	80	1-6	Rep. Ch. 197, Sec. 223, L. 1967
104	3	Rep. Ch. 99, Sec. 43, L. 1969	81	1	Rep. Ch. 197, Sec. 12-109, L. 1965
108	9	Rep. Ch. 164, Sec. 1, L. 1969	82	1-2	Rep. Ch. 199, Sec. 101, L. 1965
109	1-2	Rep. Ch. 153, Sec. 14, L. 1965	83	1	Rep. Ch. 202, Sec. 3, L. 1959
	3	Rep. Ch. 174, Sec. 16, L. 1961	87	1	S. M.R.App.Civ.P., Rule 1
	6-7b	Rep. Ch. 174, Sec. 16, L. 1961	92	4	Rep. Ch. 369, Sec. 20, L. 1969
112	1-3	Rep. Ch. 1, Sec. 4, L. 1965	93	29-30	Rep. Ch. 99, Sec. 43, L. 1969
124	2	Rep. Ch. 99, Sec. 43, L. 1969	94	1-6	Rep. Ch. 232, Sec. 9, L. 1961
	3	Rep. Ch. 147, Sec. 242, L. 1963	96	1	Rep. Ch. 129, Sec. 1, L. 1963
125	1	Rep. Ch. 368, Sec. 248, L. 1969	103	1	Rep. Ch. 196, Sec. 15, L. 1965
126	1	Rep. Ch. 368, Sec. 248, L. 1969	104	10	Rep. Ch. 177, Sec. 51, L. 1965
	2	Rep. Ch. 156, Sec. 11, L. 1965	105	1-28	Rep. Ch. 236, Sec. 30, L. 1963
	8	Rep. Ch. 368, Sec. 248, L. 1969	110	1	Rep. Ch. 361, Sec. 7, L. 1969
	6-7	Rep. Ch. 156, Sec. 11, L. 1965	114	1	Rep. Ch. 300, Sec. 143, L. 1967
149	2	Rep. Ch. 271, Sec. 33, L. 1963	117	1-4	Rep. Ch. 300, Sec. 143, L. 1967
			121	1-6	Rep. Ch. 101, Sec. 1, L. 1959

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124	2	Rep. Ch. 229, Sec. 14, L. 1967	106	1-4	Rep. Ch. 264, Sec. 10-102, L. 1963
149	1	Rep. Ch. 199, Sec. 101, L. 1965	107	1	Rep. Ch. 264, Sec. 10-102, L. 1963
151	4-7	Rep. Ch. 44, Sec. 7, L. 1961	110	1	Rep. Ch. 174, Sec. 16, L. 1961
168	1	Rep. Ch. 369, Sec. 20, L. 1969	116	1-5	Rep. Ch. 300, Sec. 143, L. 1967
173	1-5	Rep. Ch. 15, Sec. 1, L. 1959	118	1-3	Rep. Ch. 197, Sec. 223, L. 1967
175	1	Rep. Ch. 369, Sec. 20, L. 1969	129	1	Rep. Ch. 205, Sec. 1, L. 1969
176	1	Rep. Ch. 197, Sec. 12-109, L. 1965	136	1	Rep. Ch. 196, Sec. 2, L. 1967
177	4	Rep. Ch. 197, Sec. 1, L. 1959	144	1	Rep. Ch. 197, Sec. 12-109, L. 1965
178	1	Rep. Ch. 197, Sec. 12-109, L. 1965	148	105	Rep. Ch. 318, Sec. 1, L. 1969
179	1-5	Rep. Ch. 251, Sec. 28, L. 1961	150	1	Rep. Ch. 196, Sec. 2, L. 1967
1931			151	1-8	Rep. Ch. 199, Sec. 101, L. 1965
Ch.	Sec.	Herein	153	1-11	Rep. Ch. 55, Sec. 3, L. 1965
6	4	Rep. Ch. 369, Sec. 20, L. 1969	156	1	Rep. Ch. 199, Sec. 101, L. 1965
8	1-2	Rep. Ch. 300, Sec. 143, L. 1967	169	1-6	Rep. Ch. 300, Sec. 143, L. 1967
9	1	Rep. Ch. 147, Sec. 242, L. 1963	7A		Rep. Ch. 300, Sec. 143, L. 1967
32	1	Rep. Ch. 260, Sec. 12, L. 1967	170	1	Rep. Ch. 300, Sec. 143, L. 1967
33	1	Rep. Ch. 300, Sec. 143, L. 1967	175	1	Rep. Ch. 369, Sec. 20, L. 1969
35	1	Rep. Ch. 300, Sec. 143, L. 1967	176	2	Rep. Ch. 80, Sec. 14, L. 1961
38	1-4	Rep. Ch. 300, Sec. 143, L. 1967	177	1	Rep. Ch. 199, Sec. 1, L. 1961
39	7	Rep. Ch. 99, Sec. 43, L. 1969	179	1	Rep. Ch. 197, Sec. 12-109, L. 1965
40	1-2	Rep. Ch. 300, Sec. 143, L. 1967	184	4	Rep. Ch. 201, Sec. 7, L. 1961
42	1	Rep. Ch. 300, Sec. 143, L. 1967	6		Rep. Ch. 201, Sec. 7, L. 1961
45	1	Rep. Ch. 300, Sec. 143, L. 1967	188	2	Rep. Ch. 197, Sec. 12-109, L. 1965
46	1	Rep. Ch. 264, Sec. 10-102, L. 1963	192	1	Rep. Ch. 174, Sec. 16, L. 1961
47	1	Rep. Ch. 300, Sec. 143, L. 1967	194	1-3	Rep. Ch. 251, Sec. 28, L. 1961
52	1-2	Rep. Ch. 300, Sec. 143, L. 1967	196	1	Rep. Ch. 15, Sec. 1, L. 1959
59	1	Rep. Ch. 13, Sec. 84, L. 1961	2		Rep. Ch. 199, Sec. 101, L. 1965
60	1	Rep. Ch. 199, Sec. 101, L. 1965	1933		
70	2-3	Rep. Ch. 189, Sec. 2, L. 1963	Ch.	Sec.	Herein
75	1	S. Ch. 137, L. 1949	2	1	Rep. Ch. 197, Sec. 12-109, L. 1965
93	1	Rep. Ch. 197, Sec. 223, L. 1967	4	1	Rep. Ch. 368, Sec. 248, L. 1969
105	6	Rep. Ch. 93, Sec. 44, L. 1969			

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6	1	Rep. Ch. 368, Sec. 248, L. 1969	35	1	Rep. Ch. 158, Sec. 7, L. 1967
7	1	Rep. Ch. 250, Sec. 24, L. 1963			
15	1	Rep. Ch. 368, Sec. 248, L. 1969			1935
26	1	Rep. Ch. 197, Sec. 223, L. 1967	Ch. 3	Sec. 1	Rep. Ch. 368, Sec. 248, L. 1969
28	1	Rep. Ch. 368, Sec. 248, L. 1969	6	1	Rep. Ch. 1, Sec. 4, L. 1965
31	2	Rep. Ch. 99, Sec. 43, L. 1969	12	1	Rep. Ch. 199, Sec. 101, L. 1965
34	1	Rep. Ch. 13, Sec. 84, L. 1961	25	1	Rep. Ch. 368, Sec. 248, L. 1969
46	1-7	Rep. Ch. 118, Sec. 32, L. 1969	26	1-7	S. Ch. 137, L. 1949
	9-12	Rep. Ch. 118, Sec. 32, L. 1969	27	1-7	Rep. Ch. 368, Sec. 248, L. 1969
47	1-8	Rep. Ch. 251, Sec. 28, L. 1961	31	1	Rep. Ch. 368, Sec. 248, L. 1969
61	1-2	Rep. Ch. 368, Sec. 248, L. 1969	33	1	Rep. Ch. 368, Sec. 248, L. 1969
62	1	Rep. Ch. 368, Sec. 248, L. 1969	42	1	Rep. Ch. 196, Sec. 2, L. 1967
105	18-27	Rep. Ch. 154, Sec. 17, L. 1965	45	1	Rep. Ch. 67, Sec. 11 and Ch. 68, Sec. 10, L. 1967
	52	Rep. Ch. 154, Sec. 17, L. 1965	53	1	Rep. Ch. 196, Sec. 2, L. 1967
	57	Rep. Ch. 154, Sec. 17, L. 1965	54	1	Rep. Ch. 196, Sec. 2, L. 1967
	60-61	Rep. Ch. 154, Sec. 17, L. 1965	57	2	Rep. Ch. 202, Sec. 3, L. 1959
	63	Rep. Ch. 154, Sec. 17, L. 1965	59	1	Rep. Ch. 266, Sec. 82, L. 1963
	96	Rep. Ch. 147, Sec. 242, L. 1963	65	2	Rep. Ch. 147, Sec. 242, L. 1963
110	1	Rep. Ch. 174, Sec. 16, L. 1961	67	1-7	Rep. Ch. 55, Sec. 3, L. 1965
126	1-6	Rep. Ch. 101, Sec. 1, L. 1959	71	1	Rep. Ch. 368, Sec. 248, L. 1969
134	1	S. Ch. 137, L. 1949	84	2	Rep. Ch. 99, Sec. 43, L. 1969
146	1	Rep. Ch. 80, Sec. 14, L. 1961	90	1-3	Rep. Ch. 118, Sec. 32, L. 1969
148	2	Rep. Ch. 314, Sec. 14, L. 1969	94	1	Rep. Ch. 15, Sec. 1, L. 1959
153	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965	100	3	Rep. Ch. 6, Sec. 2, Ex. L. 1969
157	1-4	Rep. Ch. 369, Sec. 20, L. 1969	103	1	Rep. Ch. 13, Sec. 84, L. 1961
167	1-3	Rep. Ch. 158, Sec. 11, L. 1959	107	1	Rep. Ch. 197, Sec. 12-109, L. 1965
168	1	Rep. Ch. 99, Sec. 43, L. 1969	112	1	Rep. Ch. 264, Sec. 10-102, L. 1963
170	1	Rep. Ch. 369, Sec. 20, L. 1969	116	1	Rep. Ch. 369, Sec. 20, L. 1969
173	1	Rep. Ch. 366, Sec. 27, L. 1969		2	Rep. Ch. 60, Sec. 1, L. 1969; Ch. 369, Sec. 20, L. 1969
178	27	Rep. Ch. 151, Sec. 8, L. 1961	127	3-6	Rep. Ch. 184, Sec. 8, L. 1961
188	1-11	Rep. Ch. 368, Sec. 248, L. 1969			

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145	1	Rep. Ch. 300, Sec. 143, L. 1967	118	1-23	Rep. Ch. 280, Sec. 10, L. 1967
147	2	Rep. Ch. 174, Sec. 16, L. 1961	120	1	Rep. Ch. 251, Sec. 28, L. 1961
167	1	Rep. Ch. 56, Sec. 1, L. 1969	137	15(d)	Rep. Ch. 156, Sec. 9, L. 1961
169	7	Rep. Ch. 147, Sec. 242, L. 1963	147	1	Rep. Ch. 368, Sec. 248, L. 1969
176	1-9	Rep. Ch. 19, Sec. 10, L. 1967	161	1	Rep. Ch. 177, Sec. 51, L. 1965
180	1-6	Rep. Ch. 199, Sec. 101, L. 1965	171	1	Rep. Ch. 13, Sec. 84, L. 1961
182	1-11	Rep. Ch. 368, Sec. 248, L. 1969	172	1-6	Rep. Ch. 368, Sec. 248, L. 1969
	13	Rep. Ch. 368, Sec. 248, L. 1969	176	1-26	Rep. Ch. 314, Sec. 14, L. 1969
	14	Rep. Ch. 20, Sec. 3, L. 1959		28	Rep. Ch. 314, Sec. 14, L. 1969
	15	Rep. Ch. 368, Sec. 248, L. 1969		30	Rep. Ch. 314, Sec. 14, L. 1969
198	1-5	Rep. Ch. 199, Sec. 101, L. 1965	181	1	Rep. Ch. 368, Sec. 248, L. 1969
1937			184	1	Rep. Ch. 196, Sec. 2, L. 1967
Ch.	Sec.	Herein	185	1	Rep. Ch. 300, Sec. 143, L. 1967
2	1	Rep. Ch. 368, Sec. 248, L. 1969	187	1-5	Rep. Ch. 196, Sec. 2, L. 1967
3	1	Rep. Ch. 154, Sec. 17, L. 1965		7	Rep. Ch. 196, Sec. 2, L. 1967
8	1	Rep. Ch. 13, Sec. 84, L. 1961	192	1	Rep. Ch. 361, Sec. 7, L. 1969
10	4	Rep. Ch. 189, Sec. 2, L. 1963	196	1-2	Rep. Ch. 199, Sec. 101, L. 1965
31	1	Rep. Ch. 300, Sec. 143, L. 1967	198	1	Rep. Ch. 300, Sec. 143, L. 1967
33	1	Rep. Ch. 80, Sec. 14, L. 1961	203	1	Rep. Ch. 368, Sec. 248, L. 1969
40	2-3	Rep. Ch. 82, Sec. 4, L. 1961	204	1-7	Rep. Ch. 81, Sec. 1, L. 1959
42	1-11	Unconstitutional, 139 M 15, 359 P 2d 644	1939		
44	1	Rep. Ch. 1, Sec. 4, L. 1965	Ch.	Sec.	Herein
46	2	Rep. Ch. 158, Sec. 11, L. 1959	23	1	Rep. Ch. 1, Sec. 4, L. 1965
	4	Rep. Ch. 80, Sec. 14, L. 1961	28	1	Rep. Ch. 13, Sec. 84, L. 1961
50	1-2	Rep. Ch. 1, Sec. 4, L. 1965	35	1	Rep. Ch. 197, Sec. 12-109, L. 1965
61	1	Rep. Ch. 368, Sec. 248, L. 1969		2	Repealing Clause
86	1-11	Rep. Ch. 72, Sec. 1, L. 1959		3	Rep. Ch. 197, Sec. 12-109, L. 1965
88	1	Rep. Ch. 198, Sec. 98, L. 1967		4	Repealing Clause
96	1	Rep. Ch. 369, Sec. 20, L. 1969		5	Effective Date
102	1	Rep. Ch. 197, Sec. 12-109, L. 1965	38	3	Rep. Ch. 129, Sec. 1, L. 1963
106	1	Rep. Ch. 118, Sec. 32, L. 1969	40	1	Rep. Ch. 196, Sec. 2, L. 1967
112	1	Rep. Ch. 368, Sec. 248, L. 1969	60	1	Rep. Ch. 300, Sec. 143, L. 1967
			61	1	Rep. Ch. 13, Sec. 84, L. 1961

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63	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965	183	1-5	Rep. Ch. 55, Sec. 3, L. 1965
66	1	Rep. Ch. 68, Sec. 10, L. 1967	186	1	Rep. Ch. 13, Sec. 84, L. 1961
67	1	Rep. Ch. 369, Sec. 20, L. 1969	195	5-8	Rep. Ch. 185, Sec. 3, L. 1969
81	1-2	Rep. Ch. 368, Sec. 248, L. 1969	204	12	Rep. Ch. 192, Sec. 14, L. 1959
84	1	Rep. Ch. 368, Sec. 248, L. 1969		19	Rep. Ch. 192, Sec. 14, L. 1959
88	2-3	Rep. Ch. 361, Sec. 7, L. 1969	208	28	Rep. Ch. 147, Sec. 242, L. 1963
92	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965	213	1	Rep. Ch. 197, Sec. 12-109, L. 1965
103	1-3	Rep. Ch. 163, Sec. 1, L. 1959	222	9	Rep. Ch. 177, Sec. 51, L. 1965
117	9	Rep. Ch. 213, Sec. 9, L. 1963	<hr/>		
127	1-8	Rep. Ch. 197, Sec. 223, L. 1967	1941		
131	1	Rep. Ch. 271, Sec. 33, L. 1963	Ch.	Sec.	Herein
	3-4	Rep. Ch. 271, Sec. 33, L. 1963	3	1	Rep. Ch. 264, Sec. 10-102, L. 1963
	5	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	5	1	71-1001 to 71-1008
132	5-6	Rep. Ch. 260, Sec. 12, L. 1967		2	Repealing Clause
144	1	Rep. Ch. 194, Sec. 13, L. 1967		3	Effective Date
146	1-2	Rep. Ch. 99, Sec. 43, L. 1969	19	1	S. M.R.App.Civ.P., Rules 9, 10, 25
	3	Rep. Ch. 147, Sec. 242, L. 1963	27	1	Rep. Ch. 99, Sec. 43, L. 1969
	4-10	Rep. Ch. 99, Sec. 43, L. 1969	32	1	Rep. Ch. 368, Sec. 248, L. 1969
	11	Rep. Ch. 160, Sec. 24, L. 1965	36	1	Rep. Ch. 264, Sec. 10-102, L. 1963
	12	Rep. Ch. 99, Sec. 43, L. 1969	37	1-4	Rep. Ch. 194, Sec. 13, L. 1967
	13	Rep. Ch. 160, Sec. 24, L. 1965	41	1	S. M.R.App.Civ.P., Rule 1
14-24		Rep. Ch. 99, Sec. 43, L. 1969	44	1	Rep. Ch. 368, Sec. 248, L. 1969
	25	Rep. Ch. 160, Sec. 24, L. 1965	49	2	Rep. Ch. 252, Sec. 2, L. 1967
26-31		Rep. Ch. 99, Sec. 43, L. 1969	51	1	Rep. Ch. 368, Sec. 248, L. 1969
158	1-12	Rep. Ch. 274, Sec. 20, L. 1965	53	1	Rep. Ch. 300, Sec. 143, L. 1967
160	1-7	Rep. Ch. 250, Sec. 14, L. 1969	56	1-9	Temporary
170	1	Rep. Ch. 194, Sec. 13, L. 1967	66	1-4	Rep. Ch. 197, Sec. 223, L. 1967
172	23	Rep. Ch. 264, Sec. 10-102, L. 1963	67	1-9	Rep. Ch. 41, Sec. 24, L. 1963
177	3	Rep. Ch. 44, Sec. 7, L. 1961		11-12	Rep. Ch. 41, Sec. 24, L. 1963
	5-8	Rep. Ch. 44, Sec. 7, L. 1961	70	1-15	Rep. Ch. 197, Sec. 223, L. 1967
180	1	Rep. Ch. 129, Sec. 1, L. 1963	72	1	Rep. Ch. 300, Sec. 143, L. 1967
			81	1	Rep. Ch. 177, Sec. 51, L. 1965
			85	1	Rep. Ch. 368, Sec. 248, L. 1969
			97	1	Rep. Ch. 199, Sec. 101, L. 1965

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102	1	Rep. Ch. 264, Sec. 10-102, L. 1963	84	1	Rep. Ch. 300, Sec. 143, L. 1967
110	1	Rep. Ch. 13, Sec. 84, L. 1961	99	1-6	Rep. Ch. 368, Sec. 248, L. 1969
111	1	Rep. Ch. 197, Sec. 12-109, L. 1965	102	1-7	Rep. Ch. 197, Sec. 223, L. 1967
115	1	Rep. Ch. 199, Sec. 1, L. 1961	104	1	Rep. Ch. 368, Sec. 248, L. 1969
125	1	Rep. Ch. 196, Sec. 2, L. 1967	105	1	Rep. Ch. 368, Sec. 248, L. 1969
144	1	Rep. Ch. 368, Sec. 248, L. 1969	107	1	Rep. Ch. 199, Sec. 101, L. 1965
146	1-3	Rep. Ch. 314, Sec. 14, L. 1969	110	1	Rep. Ch. 199, Sec. 101, L. 1965
164	9(d)	Rep. Ch. 156, Sec. 9, L. 1961	111	1	Rep. Ch. 305, Sec. 2, L. 1967
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Ch.	Sec.	Herein	Ch.	Sec.	Herein
1	1-2	Rep. Ch. 1, Sec. 4, L. 1965	115	1-23	Rep. Ch. 264, Sec. 10-102, L. 1963
3	1-2	Rep. Ch. 1, Sec. 4, L. 1965		26	Rep. Ch. 264, Sec. 10-102, L. 1963
9	1	Rep. Ch. 67, Sec. 11, L. 1967	116	1	Rep. Ch. 199, Sec. 1, L. 1961
10	3	Rep. Ch. 213, Sec. 9, L. 1963	120	2	Rep. Ch. 147, Sec. 242, L. 1963
11	1	Rep. Ch. 199, Sec. 101, L. 1965	125	1-4	Rep. Ch. 197, Sec. 223, L. 1967
17	1-2	Rep. Ch. 13, Sec. 84, L. 1961	126	1	Rep. Ch. 107, Sec. 18, L. 1965
19	1-4	Rep. Ch. 368, Sec. 248, L. 1969	132	1-5	Rep. Ch. 338, Sec. 43, L. 1969
24	1-2	Rep. Ch. 32, Sec. 1, L. 1953	140	1	Rep. Ch. 13, Sec. 84, L. 1961
	4-5	Rep. Ch. 32, Sec. 1, L. 1953	141	1	Rep. Ch. 300, Sec. 143, L. 1967
31	1	Rep. Ch. 280, Sec. 10, L. 1967	151	1	Rep. Ch. 41, Sec. 24, L. 1963
32	2	Rep. Ch. 199, Sec. 101, L. 1965	156	1	Rep. Ch. 266, Sec. 82, L. 1963
40	1-2	Rep. Ch. 368, Sec. 248, L. 1969		2-6	Rep. Ch. 199, Sec. 101, L. 1965
44	1-36	Rep. Ch. 197, Sec. 223, L. 1967	157	6	Rep. Ch. 102, Sec. 3, L. 1969
	38-39	Rep. Ch. 197, Sec. 223, L. 1967		9	Rep. Ch. 213, Sec. 9, L. 1963
45	1	Rep. Ch. 32, Sec. 1, L. 1953	165	3	Rep. Ch. 266, Sec. 82, L. 1963
63	1	Rep. Ch. 369, Sec. 20, L. 1969	171	1	Rep. Ch. 38, Sec. 2, L. 1963
65	1	Rep. Ch. 368, Sec. 248, L. 1969	175	1	Rep. Ch. 197, Sec. 12-109, L. 1965
69	1	Rep. Ch. 199, Sec. 101, L. 1965	177	1	Rep. Ch. 368, Sec. 248, L. 1969
70	1-3	Rep. Ch. 264, Sec. 10-102, L. 1963	180	1	Rep. Ch. 13, Sec. 84, L. 1961
76	1	Rep. Ch. 199, Sec. 101, L. 1965	182	13	Rep. Ch. 147, Sec. 242, L. 1963
	3	Rep. Ch. 213, Sec. 9, L. 1963	183	1	Rep. Ch. 266, Sec. 82, L. 1963
				2	Rep. Ch. 199, Sec. 101, L. 1965

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	4-7	Rep. Ch. 199, Sec. 101, L. 1965	34	1	Rep. Ch. 368, Sec. 248, L. 1969
	8-9	Rep. Ch. 213, Sec. 9, L. 1963	38	14	Rep. Ch. 188, Sec. 4, L. 1959
	10-11	Rep. Ch. 199, Sec. 101, L. 1965	41	1	Rep. Ch. 262, Sec. 16, L. 1969
	12	Rep. Ch. 213, Sec. 9, L. 1963	42	1	Rep. Ch. 199, Sec. 101, L. 1965
	13-16	Rep. Ch. 199, Sec. 101, L. 1965	49	1	Rep. Ch. 368, Sec. 248, L. 1969
	17-18	Rep. Ch. 266, Sec. 82, L. 1963	57	1	Rep. Ch. 266, Sec. 82, L. 1963
184	10-11	Rep. Ch. 147, Sec. 242, L. 1963	69	1-4	Rep. Ch. 197, Sec. 12-109, L. 1965
	13	Rep. Ch. 147, Sec. 242, L. 1963	72	1	Rep. Ch. 199, Sec. 101, L. 1965
190	1-3	Rep. Ch. 368, Sec. 248, L. 1969	74	1	Rep. Ch. 42, Sec. 2, L. 1961
199	11	Rep. Ch. 102, Sec. 1, L. 1959	78	1-6	Rep. Ch. 271, Sec. 33, L. 1963
202	1-3	Rep. Ch. 260, Sec. 12, L. 1967	81	1	Rep. Ch. 199, Sec. 101, L. 1965
209	1-2	Rep. Ch. 266, Sec. 82, L. 1963	86	1-7	Rep. Ch. 197, Sec. 12-109, L. 1965
210	1	Rep. Ch. 1, Sec. 4, L. 1965	87	1	Rep. Ch. 197, Sec. 12-109, L. 1965
225	1-2	Rep. Ch. 197, Sec. 223, L. 1967	91	3-4	Rep. Ch. 215, Sec. 3, L. 1965
226	1	Rep. Ch. 38, Sec. 2, L. 1963	92	1	Rep. Ch. 13, Sec. 84, L. 1961
227	4	Rep. Ch. 262, Sec. 16, L. 1969	96	1	Rep. Ch. 199, Sec. 101, L. 1965
	8	Rep. Ch. 262, Sec. 16, L. 1969	102	1	Rep. Ch. 38, Sec. 2, L. 1963
	17-19	Rep. Ch. 262, Sec. 16, L. 1969	104	1	Rep. Ch. 368, Sec. 248, L. 1969
	33	Rep. Ch. 262, Sec. 16, L. 1969	109	1	Rep. Ch. 99, Sec. 43, L. 1969
228	1-10	Rep. Ch. 127, Sec. 15, L. 1963	110	1-5	Rep. Ch. 99, Sec. 43, L. 1969
233	4	Rep. Ch. 156, Sec. 9, L. 1961	111	3	Rep. Ch. 80, Sec. 14, L. 1961
234	1-17	Rep. Ch. 368, Sec. 248, L. 1969		4	Rep. Ch. 177, Sec. 51, L. 1965
1945			113	1	Unconstitutional, 246 F Supp 396
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2	1-4	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	127	1-2	Rep. Ch. 197, Sec. 223, L. 1967
11	1	Rep. Ch. 199, Sec. 101, L. 1965	133	1-4	Rep. Ch. 267, Sec. 16, L. 1963
23	1-3	Rep. Ch. 368, Sec. 248, L. 1969	147	1-19	Rep. Ch. 264, Sec. 10-102, L. 1963
26	1	Rep. Ch. 368, Sec. 248, L. 1969	148	1-8	Rep. Ch. 55, Sec. 1, L. 1959
27	1	Rep. Ch. 368, Sec. 248, L. 1969	155	1	Rep. Ch. 197, Sec. 12-109, L. 1965
28	1-4	Rep. Ch. 368, Sec. 248, L. 1969	162	5, 6	Rep. Ch. 369, Sec. 20, L. 1969
			167	1-3	Rep. Ch. 368, Sec. 248, L. 1969

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	3	Rep. Ch. 197, Sec. 223, L. 1967	56	1	16-1008, 16-1008A
171	1-14	Rep. Ch. 197, Sec. 223, L. 1967	59	1-10	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
174	1-2	Omitted	61	1	Rep. Ch. 260, Sec. 12, L. 1967
181	1	Rep. Ch. 199, Sec. 1, L. 1961	62	1	Rep. Ch. 199, Sec. 101, L. 1965
197	1	Rep. Ch. 184, Sec. 8, L. 1961	68	1-2	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
198	1	Rep. Ch. 266, Sec. 82, L. 1963	72	1-2	Rep. Ch. 55, Sec. 3, L. 1965
	3-6	Rep. Ch. 266, Sec. 82, L. 1963	75	Preamble,	Rep. Ch. 47, Sec. 14, L. 1963
	8	Rep. Ch. 266, Sec. 82, L. 1963	76	1-2	Rep. Ch. 266, Sec. 82, L. 1963
202	1-3	Rep. Ch. 197, Sec. 223, L. 1967	102	1	Rep. Ch. 197, Sec. 12-109, L. 1965
203	1-4	Rep. Ch. 197, Sec. 223, L. 1967	103	1-3	Rep. Ch. 199, Sec. 101, L. 1965
204	1	Rep. Ch. 271, Sec. 33, L. 1963	117	1	Rep. Ch. 368, Sec. 248, L. 1969
	3-8	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	118	1	Rep. Ch. 272, Sec. 2, L. 1959
	10-11	Rep. Ch. 271, Sec. 33, L. 1963	130	1	Rep. Ch. 369, Sec. 20, L. 1969
212	18	68-701, 68-702, 68-704 to 68-709	137	1	Rep. Ch. 198, Sec. 98, L. 1967
213	1-6	Unconstitutional, 130 M 402, 303 P 2d 938	139	1	Rep. Ch. 305, Sec. 2, L. 1967
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1947					
Ch.	Sec.	Herein	Ch.	Sec.	Herein
5	1	Rep. Ch. 300, Sec. 143, L. 1967	141	1	Rep. Ch. 368, Sec. 248, L. 1969
10	1	Rep. Ch. 300, Sec. 143, L. 1967	144	1	Rep. Ch. 197, Sec. 12-109, L. 1965
15	1	Rep. Ch. 189, Sec. 2, L. 1963	145	1	Rep. Ch. 197, Sec. 12-109, L. 1965
16	1	Rep. Ch. 13, Sec. 84, L. 1961	149	1	Rep. Ch. 197, Sec. 12-109, L. 1965
21	1	Rep. Ch. 197, Sec. 223, L. 1967	157	1	Rep. Ch. 147, Sec. 242, L. 1963
26	1	Rep. Ch. 368, Sec. 248, L. 1969	163	1	Rep. Ch. 99, Sec. 43, L. 1969
30	1	Rep. Ch. 68, Sec. 10, L. 1967	168	1	Rep. Ch. 174, Sec. 16, L. 1961
31	1-11	Rep. Ch. 300, Sec. 143, L. 1967	173	1	Rep. Ch. 68, Sec. 10, L. 1967
32	1	Rep. Ch. 300, Sec. 143, L. 1967	175	1	Rep. Ch. 251, Sec. 28, L. 1961
33	1	Rep. Ch. 300, Sec. 143, L. 1967	182	1	Rep. Ch. 38, Sec. 2, L. 1963
34	1	Rep. Ch. 300, Sec. 143, L. 1967	189	1	Rep. Ch. 197, Sec. 223, L. 1967
39	1	Rep. Ch. 300, Sec. 143, L. 1967	191	1	Rep. Ch. 197, Sec. 223, L. 1967
51	1	Rep. Ch. 199, Sec. 1, L. 1961	192	1-6	Rep. Ch. 162, Sec. 17, L. 1965
			203	1	Rep. Ch. 199, Sec. 101, L. 1965

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214	1	Rep. Ch. 199, Sec. 101, L. 1965	12	1	Rep. Ch. 314, Sec. 14, L. 1969
217	1	Rep. Ch. 218, Sec. 4, L. 1957	14	1	Rep. Ch. 260, Sec. 12, L. 1967
218	1-10	Rep. Ch. 237, Sec. 28, L. 1961	20	1	Rep. Ch. 272, Sec. 2, L. 1959
220	1-13	Rep. Ch. 17, Sec. 16, L. 1967	30	1	Rep. Ch. 3, Sec. 3, L. 1965
	14	Rep. Ch. 149, Sec. 4, L. 1959	38	1	Rep. Ch. 196, Sec. 2, L. 1967
	15-16	Rep. Ch. 17, Sec. 16, L. 1967	55	1	Rep. Ch. 368, Sec. 248, L. 1969
221	1	Rep. Ch. 256, Sec. 5, L. 1965	57	1-6	Rep. Ch. 197, Sec. 223, L. 1967
224	15	Rep. Ch. 56, Sec. 1, L. 1969	66	1	Rep. Ch. 189, Sec. 2, L. 1963
228	1	Rep. Ch. 185, Sec. 3, L. 1969	75	1	Rep. Ch. 368, Sec. 248, L. 1969
235	1	Rep. Ch. 177, Sec. 51, L. 1965	79	1	Rep. Ch. 368, Sec. 248, L. 1969
	8	Rep. Ch. 197, Sec. 1, L. 1959	82	1	Rep. Ch. 266, Sec. 82, L. 1963
238	1-2	16-1008A	84	1	Rep. Ch. 13, Sec. 84, L. 1961
240	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965		2-3	Rep. Ch. 199, Sec. 101, L. 1965
257	2	Rep. Ch. 366, Sec. 27, L. 1969	92	1	Rep. Ch. 368, Sec. 248, L. 1969
258	1-8	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	105	1	Rep. Ch. 197, Sec. 223, L. 1967
	10	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	111	1	Rep. Ch. 300, Sec. 143, L. 1967
264	1	Rep. Ch. 42, Sec. 2, L. 1961	113	1	Rep. Ch. 154, Sec. 1, L. 1959
268	1	Rep. Ch. 199, Sec. 101, L. 1965	116	1	Rep. Ch. 199, Sec. 101, L. 1965
269	1-19	Rep. Ch. 197, Sec. 223, L. 1967	127	1	Rep. Ch. 280, Sec. 10, L. 1967
270	1-4	Rep. Ch. 197, Sec. 223, L. 1967	128	1	Rep. Ch. 129, Sec. 1, L. 1963
	7	Rep. Ch. 77, Sec. 14, L. 1965	134	1-15	Rep. Ch. 47, Sec. 14, L. 1963
	8-18	Rep. Ch. 197, Sec. 223, L. 1967	135	1	S. M.R.Civ.P., Rule 4 D
276	3	Rep. Ch. 262, Sec. 16, L. 1969	136	3	Rep. Ch. 147, Sec. 242, L. 1963
	8	Rep. Ch. 262, Sec. 16, L. 1969	142	7	Rep. Ch. 187, Sec. 2, L. 1959
283	1-3	Rep. Ch. 198, Sec. 98, L. 1967	149	1	Rep. Ch. 264, Sec. 10-102, L. 1963
289	1-5	Rep. Ch. 140, Sec. 32, L. 1969	153	7	Rep. Ch. 147, Sec. 242, L. 1963
	7-23	Rep. Ch. 140, Sec. 32, L. 1969	160	1	Rep. Ch. 368, Sec. 248, L. 1969
291	1-5	Rep. Ch. 232, Sec. 9, L. 1961	168	1	Rep. Ch. 369, Sec. 20, L. 1969
295	1-7	Rep. Ch. 300, Sec. 143, L. 1967	170	1-4	Temporary
			171	1	Rep. Ch. 198, Sec. 98, L. 1967
297	6	68-701, 68-702, 68-704 to 68-709	172	1-3	Rep. Ch. 197, Sec. 223, L. 1967

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174	1	Rep. Ch. 99, Sec. 43, L. 1969	73	1	Rep. Ch. 199, Sec. 101, L. 1965
180	1	Rep. Ch. 199, Sec. 1, L. 1961	122	1	S. M.R.Civ.P., Rule 4 D
181	1	Rep. Ch. 199, Sec. 1, L. 1961		2	Rep. Ch. 189, Sec. 2, L. 1963
182	1	Rep. Ch. 202, Sec. 3, L. 1959	127	1-3	Rep. Ch. 127, Sec. 15, L. 1963
185	20	Rep. Ch. 188, Sec. 4, L. 1959	129	1	Rep. Ch. 55, Sec. 3, L. 1965
190	1	Rep. Ch. 257, Sec. 10, L. 1965	130	1	Rep. Ch. 160, Sec. 24, L. 1965
	4	Rep. Ch. 257, Sec. 10, L. 1965	138	1	Rep. Ch. 280, Sec. 10, L. 1967
191	2	Rep. Ch. 184, Sec. 8, L. 1961	143	1-6	Rep. Ch. 99, Sec. 43, L. 1969
198	1	Rep. Ch. 369, Sec. 20, L. 1969	148	2	Rep. Ch. 147, Sec. 242, L. 1963
202	1	Rep. Ch. 369, Sec. 20, L. 1969	154	1-7	Rep. Ch. 197, Sec. 223, L. 1967
205	1	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	155	1-2	Rep. Ch. 361, Sec. 7, L. 1969
	2-3	Appropriation	168	1-5	Rep. Ch. 232, Sec. 9, L. 1961
206	6	Rep. Ch. 199, Sec. 101, L. 1965	175	1-8	Rep. Ch. 300, Sec. 143, L. 1967
	7-10	Rep. Ch. 230, Sec. 1, L. 1959	176	1	Rep. Ch. 300, Sec. 143, L. 1967
	11	Rep. Ch. 199, Sec. 101, L. 1965	177	9, 10	Rep. Ch. 93, Sec. 44, L. 1969
	12	Rep. Ch. 230, Sec. 1, L. 1959	191	1-2	Rep. Ch. 194, Sec. 13, L. 1967
	13-17	Rep. Ch. 199, Sec. 101, L. 1965	193	1-6	Rep. Ch. 341, Sec. 30, L. 1969
				8	Rep. Ch. 341, Sec. 30, L. 1969
			194	5	Rep. Ch. 81, Sec. 3, L. 1961
				7-10	Rep. Ch. 158, Sec. 2, L. 1959
			201	1-17	Unconstitutional, 127 M 504, 267 P 2d 724
			203	4	Rep. Ch. 93, Sec. 44, L. 1969
			206	1	Rep. Ch. 199, Sec. 1, L. 1961
			219	1-5	Rep. Ch. 197, Sec. 12-109, L. 1965
				7-9	Rep. Ch. 197, Sec. 12-109, L. 1965
				11	Rep. Ch. 206, Sec. 27, L. 1963
				14-15	Rep. Ch. 197, Sec. 12-109, L. 1965
			222	1-18	Rep. Ch. 208, Sec. 3, L. 1961
			227	1-3	Rep. Ch. 147, Sec. 242, L. 1963

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5	1	Rep. Ch. 300, Sec. 143, L. 1967
12	1	Rep. Ch. 368, Sec. 248, L. 1969
14	1	Rep. Ch. 368, Sec. 248, L. 1969
19	1-3	Rep. Ch. 264, Sec. 10-102, L. 1963
25	1	Rep. Ch. 197, Sec. 12-109, L. 1965
42	1	Rep. Ch. 127, Sec. 15, L. 1963
52	1	Rep. Ch. 369, Sec. 20, L. 1969
59	1	Rep. Ch. 185, Sec. 3, L. 1969
60	1	Rep. Ch. 185, Sec. 3, L. 1969
62	1	Rep. Ch. 280, Sec. 22, L. 1965
64	1	Rep. Ch. 368, Sec. 248, L. 1969

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No. 54	12	Rep. Ch. 270, Sec. 10, L. 1963	118	1	Rep. Ch. 197, Sec. 12-109, L. 1965
	16	Rep. Ch. 140, Sec. 32, L. 1969	123	1	Rep. Ch. 140, Sec. 32, L. 1969
			133	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965
				5-9	Rep. Ch. 197, Sec. 12-109, L. 1965
			138	1	Rep. Ch. 97, Sec. 32, L. 1961
			139	1	Rep. Ch. 197, Sec. 12-109, L. 1965
			142	1	Rep. Ch. 189, Sec. 2, L. 1959
			150	1	Rep. Ch. 250, Sec. 24, L. 1963
			151	1	Rep. Ch. 189, Sec. 2, L. 1963
			153	1	Rep. Ch. 56, Sec. 1, L. 1969
			158	2	Rep. Ch. 99, Sec. 43, L. 1969
			162	1-18	Rep. Ch. 199, Sec. 101, L. 1965
			165	1	Rep. Ch. 147, Sec. 242, L. 1963
			166	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
			173	1	Rep. Ch. 274, Sec. 20, L. 1965
			174	1-2	Rep. Ch. 314, Sec. 14, L. 1969
			176	2	68-701, 68-702, 68-704 to 68-709
			181	1	Rep. Ch. 197, Sec. 223, L. 1967
			186	1-2	Rep. Ch. 213, Sec. 9, L. 1963
			189	1-4	Rep. Ch. 271, Sec. 33, L. 1963
			197	1	Rep. Ch. 82, Sec. 4, L. 1961
			206	1	Rep. Ch. 185, Sec. 3, L. 1969
			212	1	Rep. Ch. 42, Sec. 2, L. 1961
			214	12	Rep. Ch. 368, Sec. 248, L. 1969
				13-15	Rep. Ch. 156, Sec. 11, L. 1965
				16	Rep. Ch. 368, Sec. 248, L. 1969
			217	1	Rep. Ch. 369, Sec. 20, L. 1969
			221	1	Rep. Ch. 369, Sec. 20, L. 1969
			226	1-6	Rep. Ch. 232, Sec. 9, L. 1961
			229	1	Rep. Ch. 189, Sec. 2, L. 1963

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6	1-2	Rep. Ch. 368, Sec. 248, L. 1969
7	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
8	1	Rep. Ch. 156, Sec. 11, L. 1965
9	1	Rep. Ch. 13, Sec. 84, L. 1961
11	1	Rep. Ch. 199, Sec. 1, L. 1961
16	1	Rep. Ch. 13, Sec. 84, L. 1961
31	1-15	Rep. Ch. 197, Sec. 12-109, L. 1965
33	1	Rep. Ch. 102, Sec. 3, L. 1969
35	1	Rep. Ch. 199, Sec. 101, L. 1965
41	2	Rep. Ch. 290, Sec. 6, L. 1967
46	1	Rep. Ch. 300, Sec. 143, L. 1967
52	1	Rep. Ch. 280, Sec. 22, L. 1965
53	1	Rep. Ch. 280, Sec. 22, L. 1965
55	1	Rep. Ch. 156, Sec. 11, L. 1965
60	1	Rep. Ch. 368, Sec. 248, L. 1969
65	1	Rep. Ch. 196, Sec. 2, L. 1967
72	1-3	Rep. Ch. 368, Sec. 248, L. 1969
77	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
78	1	Rep. Ch. 78, Sec. 9, L. 1965
83	1	Rep. Ch. 368, Sec. 248, L. 1969
84	1	Rep. Ch. 197, Sec. 12-109, L. 1965
86	1-3	Rep. Ch. 199, Sec. 101, L. 1965
89	1	Rep. Ch. 99, Sec. 43, L. 1969
103	1	Rep. Ch. 189, Sec. 2, L. 1963
104	1-2	Rep. Ch. 368, Sec. 248, L. 1969

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231	1	Rep. Ch. 197, Sec. 12-109, L. 1965	104	1-10	Rep. Ch. 197, Sec. 12-109, L. 1965
235	1	Rep. Ch. 199, Sec. 101, L. 1965	106	1-3	Rep. Ch. 197, Sec. 12-109, L. 1965
238	16	Rep. Ch. 147, Sec. 242, L. 1963	109	1	Rep. Ch. 197, Sec. 12-109, L. 1965
240	1	Rep. Ch. 197, Sec. 12-109, L. 1965	110	1	Rep. Ch. 97, Sec. 32, L. 1961
241	1	Rep. Ch. 42, Sec. 2, L. 1961	112	1	Rep. Ch. 154, Sec. 17, L. 1965
242	2	Rep. Ch. 266, Sec. 82, L. 1963	116	1	Rep. Ch. 38, Sec. 2, L. 1963
249	1	Rep. Ch. 199, Sec. 101, L. 1965	117	1	Rep. Ch. 199, Sec. 101, L. 1965
251	1-15	Rep. Ch. 3, Sec. 9, Ex. L. 1967		3	Rep. Ch. 199, Sec. 101, L. 1965
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1955					
Ch.	Sec.	Herein	Ch.	Sec.	Herein
2	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963	118	1	Rep. Ch. 199, Sec. 101, L. 1965
7	1-7	Rep. Ch. 314, Sec. 14, L. 1969	119	1-4	Rep. Ch. 307, Sec. 27, L. 1967
12	1	Rep. Ch. 300, Sec. 143, L. 1967	129	1	Rep. Ch. 102, Sec. 3, L. 1969
13	1-2	Rep. Ch. 300, Sec. 143, L. 1967		2-3	Rep. Ch. 213, Sec. 9, L. 1963
15	1	Rep. Ch. 197, Sec. 12-109, L. 1965	130	1-2	Rep. Ch. 112, Sec. 15 and Ch. 213, Sec. 9, L. 1963
17	1-4	Rep. Ch. 369, Sec. 20, L. 1969	131	1	Rep. Ch. 99, Sec. 43, L. 1969
19	1	Rep. Ch. 368, Sec. 248, L. 1969		2-3	Rep. Ch. 153, Sec. 14, L. 1965
30	1-2	Rep. Ch. 197, Sec. 12-109, L. 1965	133	1	Rep. Ch. 266, Sec. 82, L. 1963
33	1	Rep. Ch. 197, Sec. 12-109, L. 1965		2	Rep. Ch. 199, Sec. 101, L. 1965
49	1	Rep. Ch. 213, Sec. 9, L. 1963	136	1	Rep. Ch. 236, Sec. 30, L. 1963
50	1	Rep. Ch. 196, Sec. 2, L. 1967	139	1-3	Rep. Ch. 285, Sec. 20, L. 1959
59	1	Rep. Ch. 197, Sec. 223, L. 1967	142	1-16	Rep. Ch. 197, Sec. 223, L. 1967
66	5	Rep. Ch. 97, Sec. 32, L. 1961	145	1	Rep. Ch. 300, Sec. 143, L. 1967
80	1-2	Rep. Ch. 368, Sec. 248, L. 1969	151	1	Rep. Ch. 236, Sec. 30, L. 1963
85	1	S. M.R.App.Civ.P., Rules 9, 10, 25	152	1	Rep. Ch. 368, Sec. 248, L. 1969
88	1	Rep. Ch. 42, Sec. 2, L. 1961	154	1	Rep. Ch. 199, Sec. 101, L. 1965
89	1	Rep. Ch. 197, Sec. 12-109, L. 1965	155	1	Rep. Ch. 158, Sec. 11, L. 1959
91	1	Rep. Ch. 197, Sec. 12-109, L. 1965	171	1-3	Temporary
92	5	68-701, 68-702, 68-704 to 68-710	175	1	Rep. Ch. 197, Sec. 12-109, L. 1965
96	1-2	Rep. Ch. 47, Sec. 14, L. 1963	177	1	Rep. Ch. 197, Sec. 12-109, L. 1965
			179	1	Rep. Ch. 163, Sec. 1, L. 1959
			181	1	Rep. Ch. 264, Sec. 10-102, L. 1963
			183	1	Rep. Ch. 197, Sec. 12-109, L. 1965
				5	Rep. Ch. 197, Sec. 12-109, L. 1965

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186	1	Rep. Ch. 232, Sec. 9, L. 1961	266	7	Rep. Ch. 368, Sec. 248, L. 1969
	3-6	Rep. Ch. 232, Sec. 9, L. 1961	277	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
187	1	Rep. Ch. 236, Sec. 30, L. 1963	278	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
192	1	Rep. Ch. 300, Sec. 143, L. 1967	279	1-7	Rep. Ch. 271, Sec. 33, L. 1963
194	1-3	Rep. Ch. 196, Sec. 2, L. 1967		8	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
	5-7	Rep. Ch. 196, Sec. 2, L. 1967		9	Rep. Ch. 271, Sec. 33, L. 1963
	9	Rep. Ch. 196, Sec. 2, L. 1967			
207	1-2	Rep. Ch. 368, Sec. 248, L. 1969			
208	1	Rep. Ch. 199, Sec. 1, L. 1961			
210	1	Rep. Ch. 60, Sec. 1, L. 1969; Ch. 369, Sec. 20, L. 1969			
212	1	Rep. Ch. 369, Sec. 20, L. 1969			
215	1-3	Rep. Ch. 197, Sec. 223, L. 1967			
	4	Rep. Ch. 77, Sec. 14, L. 1965			
	5-11	Rep. Ch. 197, Sec. 223, L. 1967			
227	1-2	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963			
237	1	Rep. Ch. 202, Sec. 3, L. 1959			
246	12	Rep. Ch. 126, Sec. 8, L. 1963			
251	1	Rep. Ch. 197, Sec. 12-109, L. 1965			
258	1	Rep. Ch. 197, Sec. 12-109, L. 1965			
261	1	Rep. Ch. 199, Sec. 101, L. 1965			
262	1	Rep. Ch. 201, Sec. 7, L. 1961			
263	39	32-2142			
	140	Rep. Ch. 139, Sec. 5, L. 1965			
264	1-7	Rep. Ch. 197, Sec. 223, L. 1967			
	9	Rep. Ch. 197, Sec. 223, L. 1967			
	11	Rep. Ch. 197, Sec. 223, L. 1967			
	12-13	Rep. Ch. 107, Sec. 18, L. 1965			
	14-21	Rep. Ch. 17, Sec. 16, L. 1967			
	22-24	Rep. Ch. 197, Sec. 223, L. 1967			
266	1-3	Rep. Ch. 368, Sec. 248, L. 1969			
	4-6	Rep. Ch. 156, Sec. 11, L. 1965			

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119	1	Rep. Ch. 338, Sec. 43, L. 1969	211	1	Rep. Ch. 126, Sec. 8, L. 1963
121	1-3	Rep. Ch. 197, Sec. 12-109, L. 1965	218	1	84-3804
129	1	Rep. Ch. 250, Sec. 24, L. 1963		2-3	Temporary
130	1	Rep. Ch. 250, Sec. 24, L. 1963		4	Effective Date and Repealing Clause
131	1	Rep. Ch. 250, Sec. 24, L. 1963	222	2	Rep. Ch. 140, Sec. 32, L. 1969
132	1	Rep. Ch. 250, Sec. 24, L. 1963	229	1-3	Temporary
143	4-6	Rep. Ch. 193, Sec. 2, L. 1963	230	1	Rep. Ch. 369, Sec. 20, L. 1969
153	1	Rep. Ch. 266, Sec. 82, L. 1963	231	1	Rep. Ch. 206, Sec. 27, L. 1963
157	1	Rep. Ch. 99, Sec. 43, L. 1969	246	9	Rep. Ch. 271, Sec. 8, L. 1959
161	1	Temporary		32	Rep. Ch. 247, Sec. 26, L. 1963
	2	Const., Art. XIII, Sec. 6		35-39	Rep. Ch. 247, Sec. 26, L. 1963
	3-4	Temporary		41	Rep. Ch. 271, Sec. 8, L. 1959
168	5-9	Rep. Ch. 314, Sec. 14, L. 1969		49	Rep. Ch. 271, Sec. 8, L. 1959
173	2	Rep. Ch. 147, Sec. 242, L. 1963		50	Rep. Ch. 271, Sec. 8, L. 1959
178	1-6	Rep. Ch. 251, Sec. 28, L. 1961		52	Rep. Ch. 246, Sec. 12, L. 1963
186	1	Rep. Ch. 164, Sec. 1, L. 1969		54	Rep. Ch. 246, Sec. 12 and Ch. 247, Sec. 26, L. 1963
190	6	Rep. Ch. 154, Sec. 17, L. 1965		56-58	Rep. Ch. 247, Sec. 26, L. 1963
197	1-7	Unconstitutional, 134 M 92, 328 P 2d 644	248	1-9	Rep. Ch. 147, Sec. 242 and Ch. 271, Sec. 33, L. 1963
200	1-10	Rep. Ch. 280, Sec. 10, L. 1967	252	1	Rep. Ch. 307, Sec. 27, L. 1967
201	3	32-2142		2	Rep. Ch. 160, Sec. 24, L. 1965
206	1	Rep. Ch. 197, Sec. 12-109, L. 1965	254	1	Rep. Ch. 197, Sec. 12-109, L. 1965

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1	1-3	Temporary	7	4	75-5204
2	1	12-337		5	75-5205
	2	12-338		6	75-5206
	3	Effective Date		7	75-5207
3	1	16-1638		8	75-5208
	2	Repealing Clause		9	Effective Date
4	1	76-107		10	Repealing Clause
	2	Repealing Clause	8	1	11-1823
5	1	76-102		2	Repealing Clause
	2	76-108	9	1	25-231
	3	Repealing Clause		2	Repealing Clause
6	1	Rep. Ch. 314, Sec. 14, L. 1969	10	1	81-908
7	1	75-5201		2	Effective Date
	2	75-5202	11	1	16-1030
	3	75-5203		2	Repealing Clause

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13	1-4	84-5606 note	35	1	26-510
14	1	Rep. Ch. 199, Sec. 101, L. 1965		2	26-511
	2	Repealing Clause		3	26-512
15	1	Repealing Clause		4	Repealing Clause
16	1	79-2001	36	1-5	Temporary
	2	79-2002	37	1	Rep. Ch. 266, Sec. 82, L. 1963
	3	79-2003		2	Repealing Clause
	4	Repealing Clause	38	1	11-966
	5	Effective Date		2	Repealing Clause
17	1	35-414	39	1	75-2901
	2	Repealing Clause		2	Repealing Clause
	3	Effective Date	40	1	32-21-132
18	1-10	Rep. Ch. 368, Sec. 248, L. 1969		2	Repealing Clause
19	1	Rep. Ch. 199, Sec. 101, L. 1965	41	1	76-117
	2	Repealing Clause		2	Repealing Clause
20	1-2	Rep. Ch. 368, Sec. 248, L. 1969	42	1	40-1302
	3	Repealing Clause		2	Repealing and Savings Clause
	4	Effective Date		3	Effective Date
21	1	48-134	43	1	40-1334
	2	Repealing Clause		2	40-1335
22	1	10-617		3	40-1336
	2	Repealing Clause		4	Repealing Clause
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	479	40-4812		543	40-5006
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VOLUME 1

Part 2

1969 Cumulative Pocket Supplement

Containing

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LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 1 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 1
(PART 2) THROUGH VOLUME 447, PACIFIC
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1-202. Organization—meetings—reports.

1-202. Organization—meetings—reports. The commission shall, within thirty days after its appointment, organize, adopt a seal, and make such rules and regulations for its administration, not inconsistent herewith, as it may deem expedient and may from time to time amend such rules and regulations. At such organization meeting it shall elect from among its members a chairman, a vice-chairman and a secretary, to serve for one year, and annually thereafter shall select such officers; all to serve until their successors are appointed and qualified. It shall at its initial meeting fix the date and place for its regular meetings. Four members shall constitute a quorum, and no action shall be taken by less than a majority of the commission. Special meetings may be called as provided by its rules and regulations. All regular and special commission meetings shall be open to the public. It shall report as provided in section 2 [82-4002] of this act. The fiscal year of the commission shall conform to the fiscal year of the state.

History: En. Sec. 5, Ch. 152, L. 1945;
amd. Sec. 3, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the ref-

erence to the reporting requirements of section 82-4002 for provisions relating to the requirements of an annual report in the seventh sentence, and deleted a provision detailing contents of report.

CHAPTER 3—REGULATION AND LICENSES

Section

1-324. Publication of notice.

1-324. Publication of notice. Notice as required by section 1-323 shall be given by publication once a week for three (3) successive weeks in a newspaper of general circulation in the county in which the hearing is to be held and by personal service by mailing to all interested parties. However, in the case of the hearings required by subdivisions (2) (b) and (9) of section 1-323, R. C. M. 1947, if no written protest or written request

that the hearing be held is received by the commission within five (5) days after the date of the last publication of such notice, the commission may, in its discretion, vacate such hearing and fix and establish the rates, fares, charges, classifications and rules of the air carrier without hearing. The notice required herein shall state that the commission may vacate the hearing unless a written protest or request that the hearing be held is received by the commission as required by this section.

History: En. Sec. 3, Ch. 171, L. 1967;
amd. Sec. 1, Ch. 208, L. 1969.

Amendments

The 1969 amendment authorized person-

al service by mail and provided that hearings on rates, fares, charges, classifications and rules of air carriers may be vacated if no written protest or request is received.

CHAPTER 8—ESTABLISHMENT OF AIRPORTS BY COUNTIES AND CITIES—MUNICIPAL AIRPORTS ACT

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1-829. Definitions.

1-830. Passenger service charges authorized—purpose—filing of return—remitting charges—disposition of return and charges—deposit and use of charges.

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1-832. Unpaid charges collectible through civil proceedings.

1-804. (5668.38) Tax levy for establishment and operation of airports.

For the purpose of establishing, constructing, equipping, maintaining and operating airports and landing fields under the provisions of this act the county commissioners or the city or town council may each year assess and levy in addition to the annual levy for general administrative purposes, a tax of not to exceed two (2) mills on the dollar of taxable value of the property of said county, city or town. In the event of a jointly established airport or landing field, the county commissioners and the council or councils involved shall determine in advance the levy necessary for such purposes and the proportion each political subdivision joining in the venture shall pay, based upon the benefits it is determined each shall derive from the project. Provided, that if it be found that the levy hereby authorized will be insufficient for the purposes herein enumerated, the commissioners and councils acting are hereby authorized and empowered to contract an indebtedness on behalf of such county, city or town, as the case may be, upon the credit thereof by borrowing money or issuing bonds for such purposes, provided that no money may be borrowed and no bonds may be issued for such purpose until the proposition has been submitted to the taxpayers affected thereby, and a majority vote to be cast therefor, except that for the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways and ramps, said governing bodies may set up annual reserve funds in their annual budget, provided said reserve is approved by the governing bodies during the normal budgeting procedure. Provided further that the necessity to resurface or improve said runways by overlays or similar methods every so many years is based upon competent engineering estimates, and provided that said funds are expended at least within each ten (10) year period. Said fund shall not exceed at any time a competent engineering estimate of the cost of re-

surfacing or overlaying the existing runways, taxiways and ramps, of any one airport for each said fund. The governing body of said airport, if in its judgment deems it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the F.D.I.C. or obligations of the United States of America, either short-term or long-term. Interest earned from such investments shall be credited to the operations and maintenance budget of said airport governing body. The above provisions, notwithstanding other budget control measures, and due to the uniqueness of the subject matter, and are hereby declared necessary in the interests of the public health and safety.

History: En. Sec. 4, Ch. 108, L. 1929; amd. Sec. 4, Ch. 54, L. 1941; amd. Sec. 1, Ch. 54, L. 1945; amd. Sec. 1, Ch. 122, L. 1969. their annual budget to resurface, overlay or improve existing runways, taxiways and ramps.

Repealing Clause

Amendments Section 2 of Ch. 122, Laws 1969 repealed all acts and parts of acts in conflict therewith.

The 1969 amendment added the provisions authorizing governing bodies of airports to set up annual reserve funds in

1-829. Definitions. As used in this act unless the context indicates otherwise:

(1) "Passenger air carrier" means a common carrier of passengers for hire by aircraft weighing over twelve thousand five hundred (12,500) pounds on a regular schedule or schedules, and a carrier of passengers for hire by aircraft weighing over twelve thousand five hundred (12,500) pounds on a contract or charter basis.

(2) As used in this act "city" means a city of the first class and "county" means a county of the first, second, or third class.

History: En. Sec. 1, Ch. 281, L. 1969. the use of certain public airports by passenger air carriers and providing for reporting, collection, disposition and use thereof.

Title of Act

An act authorizing cities and counties to impose passenger service charges for

1-830. Passenger service charges authorized—purpose—filing of return—remitting charges—disposition of return and charges—deposit and use of charges. (1) Every city or county which constructs, operates or maintains, individually or jointly, a public airport with funds contributed in whole or in part, directly or indirectly, by the state, county, city or other public authority, is authorized and empowered to require every passenger air carrier for hire which uses the airport for commercial use of aircraft, to pay a service charge of one dollar (\$1) for each passenger emplaning upon its aircraft at any such public airport as a point of origin for transportation purposes. The charge authorized to be imposed herein is in consideration of the use of the airport and associated airport facilities provided by the public for taking off and landing of commercial passenger aircraft, for providing facilities for the passengers thereof, and to defray the cost of furnishing, operating, improving and maintaining the public airport and related facilities. The charge herein provided for is in addition to any other charges that may be required or imposed by an air carrier for hire for transportation or other services provided.

(2) Each passenger air carrier subject to the provisions of this act shall:

(a) Before the fifteenth (15th) of each month, file a return with the state board of equalization showing the number of passengers for hire emplaning on aircraft of the passenger air carrier at each public airport in the state during the preceding calendar month;

(b) File with the return, additional other pertinent information required by the board;

(c) Remit with the return the service charges imposed under this act.

(3) Before the first (1st) day of the calendar month following that in which a return is filed, the board shall:

(a) Audit the return;

(b) Forward to each city or county that operates a city or county airport and which imposes a service charge as herein authorized, the amount of the charges collected for passengers emplaning at that airport;

(c) Forward to each city and county which jointly operate a city-county airport and which impose a service charge as herein authorized, the amount of the charges collected for passengers emplaning at the airport, dividing the amount of the charges equally between the county and the city.

(4) All service charges received by counties and cities under the provisions of this act shall be deposited in the airport fund of the county or city or in the joint airport fund of the city and county and shall be used for construction, improvement, operation, maintenance and repair of its public airport or for the retirement of bonds issued for the construction or improvement of the airport.

History: En. Sec. 2, Ch. 281, L. 1969.

1-831. Carrier may collect charge from passenger. Nothing in this act shall prevent a passenger air carrier from collecting, directly or indirectly, the service charge payable for each paying passenger from the passenger.

History: En. Sec. 3, Ch. 281, L. 1969.

1-832. Unpaid charges collectible through civil proceedings. If any person, firm, or corporation subject to the provisions of this act fails or neglects to pay the service charges, the same may be collected through civil proceedings in an appropriate court.

History: En. Sec. 3, Ch. 281, L. 1969.

TITLE 3—AGRICULTURE, HORTICULTURE AND DAIRYING

Chapter

1. Department and commissioner of agriculture—creation and general powers, 3-106, 3-116 to 3-123.
8. Agricultural seeds, 3-802.1 to 3-802.3, 3-803, 3-820, 3-821.
14. Standard grades and brands for Montana farm products, 3-1401 to 3-1407, 3-1409, 3-1410.
23. Eggs and egg dealers—license, 3-2301, 3-2306, 3-2307, 3-2310.
29. Wheat research and marketing, 3-2914.

CHAPTER 1—DEPARTMENT AND COMMISSIONER OF AGRICULTURE— CREATION AND GENERAL POWERS

Section

- 3-106. Biennial report.
- 3-116. Purpose of act.
- 3-117. Definitions.
- 3-118. Agricultural marketing co-ordinator—qualifications—responsibilities.
- 3-119. Co-ordinator's duties.
- 3-120. Co-ordinator under supervision of commissioner of agriculture.
- 3-121. Agricultural marketing advisory body—composition—meetings—duties—reimbursement.
- 3-122. Co-ordinator's recommendations—commissioner's reports.
- 3-123. State agencies participating in marketing to co-operate.

3-106. (3560) Biennial report. The commissioner of agriculture shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 6, Ch. 216, L. 1921; re-en. Sec. 3560, R. C. M. 1921; amd. Sec. 4, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the reference to the reporting requirements of section 82-4002 for provisions relating to the requirements of an annual report.

3-116. Purpose of act. It is the purpose of this act to create the position of agricultural marketing co-ordinator. It is the intent of the legislature in creating this position to have the agricultural marketing co-ordinator co-ordinate marketing all the way from the initial producer to the consumer. It is further the intent of this act to reduce marketing cost by empowering the co-ordinator to assist both producer and industry to find ways to more efficiently market their products. The co-ordinator will also endeavor to develop new and improved systems of marketing which will result in the stabilization and improvement of returns for industry and the producer. He will work with farm leaders, farmer co-operatives, processors, wholesalers, retailers, representatives of the transportation industry, consumer groups and others as a means of correcting marketing inefficiencies or eliminating restrictions.

History: En. Sec. 1, Ch. 330, L. 1969.

Title of Act

An act to establish within the department of agriculture of the state of Mon-

tana an agricultural marketing co-ordinator and empower the co-ordinator to analyze, advise, and make necessary recommendations in the field of agricultural marketing.

3-117. Definitions. As used in this act unless the context indicates otherwise:

(1) "Marketing" means the sum total of activities involved in getting agricultural products from the producer to the consumer and it includes transportation, processing, and distribution.

(2) "Agricultural products" means crops, livestock and livestock products.

(3) "Commissioner" means commissioner of agriculture.

History: En. Sec. 2, Ch. 330, L. 1969.

3-118. Agricultural marketing co-ordinator — qualifications — responsibilities. (1) There shall be within the department of agriculture of the state of Montana an agricultural marketing co-ordinator. He shall be a graduate of an accredited college with a master's degree in marketing or related field; he must possess the ability to plan, organize and carry out an effective marketing program; he must possess the ability to work harmoniously with other staff members and professional members in other organizations and industry; and he must have a minimum of two (2) years' experience in marketing or related fields.

(2) The co-ordinator is primarily responsible for providing leadership in marketing. He must keep informed in the subject matter related to this assignment. His major responsibility is to identify major needs and establish priorities in marketing and assist in developing marketing programs that will be directed toward a solution of these needs.

History: En. Sec. 3, Ch. 330, L. 1969.

3-119. Co-ordinator's duties. It shall be the duty of the marketing co-ordinator:

(1) To keep abreast of research results in the subject matter area of marketing;

(2) To co-ordinate work with local, state and national planning groups and other interested parties in helping them identify major problem areas and needs in marketing;

(3) To develop and carry out appropriate action programs that will result in significant improvements being made by those people concerned with problems of marketing;

(4) To co-ordinate efforts with representatives of other agencies or organizations or persons who are concerned with related programs;

(5) To investigate the costs of marketing;

(6) To gather and disseminate information concerning supply, demand, favorable marketing information, prevailing prices, and changes in marketing movements, practices and rates, including common and cold storage of food products;

(7) To promote, assist and encourage the organization and operation of co-operative and other associations and organizations for improving the relations and services among producers, distributors and consumers of food products;

(8) To investigate the practice and methods concerning the marketing of agricultural products;

(9) To act as mediator or arbitrator, when invited, in any controversy or issue that may arise between producers and distributors;

(10) To assist producers and distributors in the economical and efficient distribution of agricultural products at fair prices;

(11) Appear and be heard at any hearing involving agricultural marketing affecting Montana.

History: En. Sec. 4, Ch. 330, L. 1969.

3-120. Co-ordinator under supervision of commissioner of agriculture.

The agricultural marketing co-ordinator shall be under the supervision of the commissioner of agriculture of the state of Montana.

History: En. Sec. 5, Ch. 330, L. 1969.

3-121. Agricultural marketing advisory body—composition—meetings—

duties—reimbursement. There is an agricultural marketing advisory body. It shall consist of nine (9) members. The dean of the school of agriculture at Montana state university, and the commissioner of agriculture shall be ex officio members. Seven (7) members shall be appointed by the commissioner of agriculture from representatives from transportation, representatives from farm and commodity organizations, representatives from the field of processing, representatives from the field of retailers and representatives of research and educational institutions. No more than four (4) of those members appointed shall be from the same political party, and those appointed shall serve at the pleasure of the commissioner. This advisory body shall meet at the call of the commissioner, but at least once a year. This advisory body shall advise, assist and direct the marketing co-ordinator in implementing the provisions of this act. They shall receive reimbursement for necessary expenses incurred in carrying out the provisions of this act.

History: En. Sec. 6, Ch. 330, L. 1969.

3-122. Co-ordinator's recommendations — commissioner's reports. (1)

The agricultural marketing co-ordinator shall make written recommendations to the commissioner concerning the needs for the development of new and improved systems for marketing agricultural products. He shall also recommend changes or additions for improved marketing services.

(2) The commissioner shall submit an annual written report to the governor on or before October 1 of each year containing the findings, conclusions, and recommendations of the agricultural marketing co-ordinator. He may also submit a report to the next legislative assembly.

History: En. Sec. 7, Ch. 330, L. 1969.

3-123. State agencies participating in marketing to co-operate. All agencies of the state of Montana who participate in marketing as defined in section 2 [3-117], subsection (1) of this act shall co-operate and assist with the agricultural marketing co-ordinator.

History: En. Sec. 8, Ch. 330, L. 1969.

CHAPTER 2—GRAIN STANDARDS—STORAGE AND INSPECTION—
REGULATION OF GRAIN WAREHOUSES**3-202. (3575.2) Repealed.****Repeal**

Section 3-202 (Sec. 2, Ch. 124, L. 1927; Sec. 2, Ch. 31, L. 1933; Sec. 2, Ch. 146, L. 1939; Sec. 1, Ch. 109, L. 1945; Sec. 1, Ch. 163, L. 1947; Sec. 1, Ch. 89, L. 1953; Sec.

1, Ch. 85, L. 1957; Sec. 1, Ch. 145, L. 1961), relating to fees to be paid to state sealer of weights and measures, was repealed by Sec. 43, Ch. 99, Laws 1969.

CHAPTER 8—AGRICULTURAL SEEDS

Section

3-802.1. Definitions.

3-802.2. Labeling of agricultural seeds.

3-802.3. Labeling of vegetable and flower seeds.

3-803. Exception of seeds, when.

3-820. Prohibitions.

3-821. Commissioner of agriculture empowered to revise classifications—hearing—order.

3-801, 3-802. (3593, 3594) Repealed.**Repeal**

Sections 3-801 and 3-802 (Secs. 1, 2, Ch. 12, L. 1913; Sec. 1, Ch. 110, L. 1929; Sec. 1, Ch. 192, L. 1937; Secs. 2, 3, Ch. 88, L.

1939; Secs. 1, 2, Ch. 155, L. 1951; Sec. 1, Ch. 168, L. 1961), relating to the labeling of agricultural seeds, were repealed by Sec. 7, Ch. 361, Laws 1969.

3-802.1. Definitions. Terms used in this act and not otherwise identified are hereby defined:

(1) Agricultural seeds shall be the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds, and shall include lawn seeds and mixtures of seeds.

(2) Vegetable seeds shall include the seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds.

(3) Flower seeds shall include seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and are commonly known and sold under the name of flower seeds in this state.

(4) (a) The term “weed seeds” shall include the seeds or bulblets of all plants generally recognized as weeds within this state, and shall include noxious weed seeds.

(b) Noxious weed seeds are hereby divided into two (2) groups defined as follows:

1. “Prohibited noxious weed seeds” are the seeds of perennial and other serious weeds that not only reproduce by seed but also may spread by underground roots, stems, and other reproductive parts, and which when well established, are highly destructive and difficult to control in this state by ordinary good cultural practice. Prohibited noxious weed seeds shall include the seeds of:

Canada thistle	(Cirsium arvense)
	(Carduus arvensis)
Leafy spurge	(Euphorbia esula)
White top	[Lepidium cardaris draba]
(Perennial peppergrass)	(Cardaria draba)
(Hoary cress)	(Cardaria pubescens)
Quack grass	(Agropyron repens)
Russian knapweed	(Centaurea pteris)
Perennial sow thistle	(Sonchus arvensis)
Wild morning glory	(Convolvulus arvensis)
(Field bindweed)	
Dalmatian toadflax	(Linaria dalmatica)
Halogeton	(Halogeton glomeratus)
Medusa-head wildrye	(Elymus caput-medusae)
Creeping bell flower	(Campanula rapunculoides)
Common toadflax	(Linaria vulgaris)

2. "Restricted noxious weed seeds" are the seeds of weeds that are very objectionable in fields, lawns and gardens of this state, but can be controlled by good cultural practices. Restricted noxious weed seeds shall include the seeds of:

Dodder	(Cuscuta spp.)
Blue flowering lettuce	(Lactuca pulchella)
St. Johnswort	(Hypericum perforatum)
(Klamath-weed)	
Ox-eye daisy	(Chrysanthemum leucanthemum)
Spotted knapweed	(Centaurea maculosa)
Hoary false alyssum	(Berteroa incana)
Wild oats	(Avena fatua)
Buckhorn plantain	(Planago lanceolata)
Chickweed	(Stellaria spp.)
Curled dock	(Rumex crispus)

(5) The term "hybrid" applied to kinds of varieties of seed means the first generation seed of a cross produced by controlling the pollination and by combining (a) two or more inbred lines; (b) one inbred or a single cross with an open pollinated variety; or (c) two or more selected clones, seed lines, varieties, or species. "Controlling the pollination" means to use a method hybridization which will produce pure seed which is at least seventy-five per cent (75%) hybrid seed. Hybrid designations shall be treated as variety names.

(6) The terms "approximate percentage" and "approximate number" shall mean the percentage or number with the variations above or below as allowed according to the tolerance limits defined in the "rules for seed testing" adopted by the Association of Official Seed Analysts of North America.

(7) The term "percentage of germination" shall mean the percentage of seeds which show normal sprouts as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of

seed, as specified in the "rules for seed testing" adopted by the Association of Official Seed Analysts of North America.

(8) The term "name of state in which the seed was grown" shall mean any of the several states of the United States or the foreign country.

(9) The term "other crop seeds" shall mean any agricultural, vegetable, or flower seeds other than the seed or the mixture of seeds under consideration.

(10) The term "sell" shall include "offer for sale," "expose for sale," "have in possession for sale," "exchange," "barter," or "trade." It shall also include agricultural seeds which are furnished to growers for the production of a crop on contract.

History: En. Sec. 1, Ch. 361, L. 1969.

Title of Act

An act to provide a uniform agricultural seed law defining seeds and regulat-

ing the sale and labeling of seeds by amending section 3-803 and by repealing sections 3-801, 3-802, 3-816, 3-817, 3-818, 3-819, R. C. M. 1947.

3-802.2. Labeling of agricultural seeds. The owner, vendor, or person in possession of each and every package, parcel, or lot of agricultural seeds, as defined in the first section [3-802.1] of this act, that contains one (1) pound, or more, of agricultural seeds, whether in package or in bulk, shall before offering the seeds for sale affix in a conspicuous place on the exterior of the container a written or printed label in the English language in legible type or copy and the label shall contain a statement specifying:

(1) A lot number or other distinguishing mark.

(2) Kind. The name of each kind of seed present in excess of five per cent (5%) shall be shown on the label and need not be accompanied by the word "kind." When two or more kinds of seed are named on the label, the name of each kind shall be accompanied by the percentage of each. When only one kind of seed is present in excess of five per cent (5%) and no variety name or type designation is shown, the percentage of that kind may be shown as "pure seed" and such percentage shall apply to seed of the kind named.

Variety. (a) The following kinds of agricultural seeds are generally labeled as to variety and shall be labeled to show the variety name or the words "Variety Not Stated":

Alfalfa	Oat
Barley	Pea, field
Bean, field	Rye
Beet, field	Safflower
Brome, smooth	Sorghum
Clover, crimson	Sorghum-Sudan hybrid
Clover, red	Soybean
Clover, white	Sudangrass
Corn, field	Sunflower
Corn, pop	Trefoil, Birdsfoot
Fescue, tall	Wheat, common
Flax	Wheat, Durum
Millet, foxtail	

(b) If the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety." The percentage in this case may be shown as "pure seed" and shall apply only to seed of the variety named. If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" shall be clearly associated with the respective percentages. When two or more varieties are present in excess of five per cent (5%) and are named on the label, the name of each variety shall be accompanied by the percentage of each.

(3) If any one kind or kind and variety of seed present in excess of five per cent (5%) is "hybrid" seed, it shall be designated "hybrid" on the label. The percentage that is hybrid shall be at least ninety-five per cent (95%) of the percentage of pure seed shown unless the percentage of pure seed which is hybrid seed is shown separately. If two or more kinds or varieties are present in excess of five per cent (5%) and are named on the label, each that is hybrid shall be designated as hybrid on the label. Any one kind or kind and variety that has pure seed which is less than ninety-five per cent (95%) but more than seventy-five per cent (75%) hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show (a) the percentage of pure seed that is hybrid seed or (b) a statement such as "Contains from seventy-five per cent (75%) to ninety-five per cent (95%) hybrid seed." No one kind or variety of seed shall be labeled as hybrid if the pure seed contains less than seventy-five per cent (75%) hybrid seed.

(4) Origin, state or foreign country if known, of alfalfa, red clover, white clover, native range grasses and field corn other than hybrid. If the origin is unknown, the fact shall be stated.

(5) The approximate percentage of germination of agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately; with the provision that any portion or all of the percentage of hard seeds may be added to the percentage of germination, and stated as "total germination and hard seed."

(6) The approximate percentage by weight of pure seed, meaning the freedom of agricultural seeds from inert matter and from other seeds.

(7) The approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in agricultural seeds.

(8) The approximate total percentage by weight of weed seeds.

(9) The approximate percentage by weight of other crop seeds in agricultural seeds.

(10) The name and approximate number of each kind or species of restricted noxious weed seeds occurring in excess of nine (9) weed seeds per pound of agricultural, vegetable, or flower seeds.

(11) The full name and address of the seedsman, importer, dealer or agent, other person or persons, or firm or corporation selling the agricultural seed.

(12) In the case of mixtures of agricultural seeds which contain two

(2) or more kinds of seed in excess of five per cent (5%) by weight of each, when sold as mixtures:

(a) Name of mixture.

(b) The name and approximate percentage by weight of each kind of agricultural seed present in the mixture in excess of five per cent (5%) by weight of the total mixture.

(c) Approximate percentage by weight of broken seeds and other inert matter in the mixture of agricultural seeds.

(d) Approximate percentage by weight of weed seeds as defined in the first section [3-802.1] of this act.

(e) Approximate percentage by weight of other crop seed in the mixture of agricultural seeds.

(f) The name and approximate number of each kind or species of restricted noxious weed seeds occurring in excess of nine (9) weed seeds per pound of mixtures of agricultural seeds, subject, however, to restrictions as specified in the fourth section [3-820] of this act.

(g) Approximate percentage of germination of each kind of agricultural seed present in the mixture in excess of five per cent (5%) by weight, together with the month and year the seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the hard seed may be added to the percentage of germination and stated as "total germination and hard seed."

(h) Full name and address of the vendor of the mixture.

History: En. Sec. 2, Ch. 361, L. 1969.

3-802.3. Labeling of vegetable and flower seeds. Vegetable and flower seeds in packets and in larger containers shall be labeled with the required information as follows:

(1) Each container of one (1) pound or less:

(a) The commonly accepted name of the kind or the kind and variety of the seed.

(b) The name and address of the person who labeled the seed or who sells the seed within this state.

(c) The name and number per pound of each kind of restricted noxious weed seeds as prescribed in section 4 [3-820] of this act.

(d) In the case of seed which has a percentage of germination less than the standard prescribed in the Federal Seed Act:

1. The percentage of germination.

2. The percentage of hard seed, if more than one per cent (1%).

3. The month and year the test to determine the data required by this section was completed.

4. The words "below standard germination" in not less than eight (8) point boldface type.

(2) Each container of more than one (1) pound:

(a) The name of the kind and variety of the contents.

(b) The lot numbers or other lot identification.

(c) The name and number per pound of each kind of restricted noxious weed seed as prescribed in section 4 [3-820] of this act.

(d) The percentage of germination and whether the percentage of germination meets or exceeds the standard established in the Federal Seed Act.

(e) The percentage of hard seed, if more than one per cent (1%).

(f) The month and year the test to determine the data required by this section was completed.

(g) The name and address of the person who labeled the seed or who sells the seed within this state.

History: En. Sec. 3, Ch. 361, L. 1969. United States Code as Tit. 7, sec. 1551 et seq.

Compiler's Notes

The Federal Seed Act is compiled in the

3-803. (3595) Exception of seeds, when. Agricultural seeds or mixtures of same shall be exempt from the provisions of this act:

(1) When possessed, exposed for sale, or sold for food purposes only.

(2) When sold to merchants or dealers to be recleaned before being sold or offered for sale for seeding purposes.

(3) When in store for the purpose of recleaning or not possessed, sold or offered for sale for seeding purposes within the state.

History: En. Sec. 3, Ch. 12, L. 1913; re-en. Sec. 3595, R. C. M. 1921; amd. Sec. 4, Ch. 88, L. 1939; amd. Sec. 6, Ch. 361, L. 1969. a processor of sugar beets to growers contracting the growing and delivery of sugar beets to such vendor or distributor."

Repealing Clause

Section 7 of Ch. 361, Laws 1969 read "Sections 3-801, 3-802, 3-816, 3-817, 3-818 and 3-819 R. C. M. 1947, are repealed."

Amendments

The 1969 amendment deleted former subdivision (4) exempting seeds "sold by

3-816 to 3-819. Repealed.

Repeal

Sections 3-816 to 3-819 (Sees. 1 to 4, Ch. 196, L. 1961), relating to the labeling of

vegetable and flower seeds, were repealed by Sec. 7, Ch. 361, Laws 1969.

3-820. Prohibitions. No person, firm, corporation, copartnership or association shall sell or transport for use in planting in the state of Montana any agricultural, vegetable or flower seed that:

(1) Contains prohibited noxious weed seeds.

(2) Contains restricted noxious weed seeds in excess of the maximum numbers per pound as follows:

Species	Number allowed per pound
Dodder (Cuscuta spp.)	18
Blue flowering lettuce (Lactuca pulchella)	27
St. Johnswort (Hypericum perforatum) (Klamath-weed)	27
Ox-eye daisy (Chrysanthemum leucanthemum)	90
Spotted knapweed (Centaurea maculosa)	18
Hoary false alyssum (Berteroa incana)	9
Wild oats (Avena fatua)	45
Buckhorn plantain (Plantago lanceolata)	90
Chickweed (Stellaria spp.)	9
Curled dock (Rumex crispus)	45

(3) Contains in excess of two per cent (2%) or more of weed seed.

(4) Is offered or exposed for sale more than nine (9) calendar months from the last day of the month in which the germination test was completed. This nine (9) month limitation shall not apply when seed is packaged in hermetically sealed containers within twelve (12) months after harvest. The container must be conspicuously labeled in not less than eight (8) point type to indicate:

(a) That the container is hermetically sealed.

(b) That the seed has been preconditioned as to moisture content.

(c) That the germination test is valid for a period not to exceed eighteen (18) months from the date of the germination test for seeds offered for sale on a wholesale basis, and for a period not to exceed thirty-six (36) months for seeds offered for sale at retail.

(d) That the germination of vegetable seed at the time of packaging was equal to or above standards prescribed in the Federal Seed Act of August 1963, with subsequent revisions.

(5) Is represented in any manner to be for lawn seeding purposes, unless it contains at least fifty per cent (50%) pure seed of perennial fine-leaf species which shall be specified by rules and regulations pursuant to this act. However, grass mixtures which do not contain fifty per cent (50%) pure seed of perennial fine-leaf grasses may be sold. When these grass mixtures are contained in packages of twenty-five (25) pounds or less, they shall carry the statements: "Not recommended for a fine-leaf perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable." A definition of fine-leaf varieties to be promulgated in the regulations is as follows:

(a) Bluegrasses—all varieties except Canada Bluegrass (*Poa compressa*) and Annual Bluegrass (*Poa annua*).

(b) Chewings Red Fescue and all improved varieties.

(c) Creeping Red Fescue and all improved varieties.

(d) Bentgrass—all varieties.

(e) Fine-Leafed Ryegrasses.

History: En. Sec. 4, Ch. 361, L. 1963.

3-821. Commissioner of agriculture empowered to revise classifications—hearing—order. The commissioner of agriculture may, with the written approval of the director of the Montana experiment station recorded prior to or within ten (10) days after the public hearing, prescribed herein, add to or remove from, revise, or modify the foregoing groups and classifications of noxious weed seeds, and the noxious weed seeds within any groups or classifications, as the circumstances may require in aid of the purpose of this act to prevent or diminish the distribution and occurrence of such noxious weed seeds within the state of Montana, but no additions, removals or modifications shall be made without a full public hearing, on adequate and informative written or published notice plainly stating the exact additions, removals or modifications proposed to be made, and said notice shall be given by the commissioner at least thirty (30) days before the day set for said hearing and shall state the time and place of said hearing, and said notice shall be published in three (3) newspapers of general circulation in the state, and such notice shall be mailed to all associations of seed dealers in the state who are organized on a state-wide basis. If any revision or modification is determined to be made as a result of any such hearing, the same shall be promulgated by a written order of the commissioner, countersigned “approved” by the director of the Montana experiment station, plainly stating the revisions or modifications and the effective date or dates thereof, and any and all qualifications, exceptions or conditions connected with such revisions or modifications.

History: En. Sec. 5, Ch. 361, L. 1969.

CHAPTER 14—STANDARD GRADES AND BRANDS FOR MONTANA FARM PRODUCTS

Section

- 3-1401. Standard grades for Montana farm products.
- 3-1402. Definitions.
- 3-1403. Commissioner to establish standard grades—notice required.
- 3-1404. Grading and branding of products required—labeling of culls.
- 3-1405. Unlawful to sell or transport products unless labeled, tagged or branded—use of tags.
- 3-1406. Inspection of condition of products in storage or transit.
- 3-1407. Enforcement of act.
- 3-1409. Intent and purpose of act.
- 3-1410. Violation of provisions—penalty.

3-1401. (3633.1) Standard grades for Montana farm products. The standard grades for Montana farm products and other farm products shall be limited to the United States grades covering the same products and shall conform in all respects and be identical with the latest standards established by the United States secretary of agriculture for the various commodities, and thus conforming shall be accepted as the legal standards for the state of Montana.

History: En. Sec. 1, Ch. 165, L. 1933;
amd. Sec. 1, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted “and other farm products” after “Montana farm products.”

3-1402. (3633.2) Definitions. The following terms, whenever used in this act, or in rules and regulations later promulgated by the commissioner of agriculture, shall have the meaning as indicated:

(a) "Commissioner" shall mean the commissioner of agriculture of the Montana department of agriculture.

(b) The term "Montana farm products" shall mean all products of the farm grown commercially in Montana intended for table use such as potatoes, cherries, and dry beans. The term "Montana farm products" shall not be limited to those farm products grown in Montana but shall include like products grown outside this state.

(c) The term "other farm products" shall mean all farm products which are not normally grown commercially in Montana such as grapefruit and oranges; but in either subsection (b) or (c) these terms shall not include livestock and its by-products; poultry and its products; apiary products; dairy products; grain and apples.

(d) "Container" or "package" shall mean cloth or fibre sacks, barrel, box, crate, carton, hamper or baskets, such as are customarily used for the shipment of Montana farm products and other farm products.

(e) "Person" as used herein shall mean any grower, dealer, shipper, society, association, organization, corporation or their agents or representatives.

History: En. Sec. 2, Ch. 165, L. 1933; amd. Sec. 2, Ch. 79, L. 1969.

Amendments

The 1969 amendment rewrote subsection (b), changing the term defined from "farm products" to "Montana farm prod-

ucts"; inserted a new subsection (c), re-designated former subsections (c) and (d) as new subsections (d) and (e); inserted "Montana" before "farm products" in subsection (d) and added "and other farm products" at the end of that subsection.

3-1403. (3633.3) Commissioner to establish standard grades — notice required. (a) The commissioner of agriculture shall at once establish in the manner provided by this act, United States standard grades on potatoes, dry beans, cherries and shall thereafter, as soon as any Montana farm product or other farm product shall have reached a volume rendering it of market importance, establish United States grades on same.

(b) The commissioner of agriculture shall establish grades and designate Montana farm products and other farm products by proclamation, giving thirty (30) days' notice of such action, and shall publish such proclamation two (2) times in at least three (3) papers of general circulation within the state.

History: En. Sec. 3, Ch. 165, L. 1933; amd. Sec. 3, Ch. 79, L. 1969.

Amendments

The 1969 amendment, in subsection (a), deleted provisions for standard grades for onion, head lettuce and cabbage, inserted

"dry" before "beans" and "cherries" after "beans," and substituted "Montana farm product or other farm product" for "agricultural product"; in subsection (b), inserted "and designate Montana farm products and other farm products" after "establish grades."

3-1404. (3633.4) Grading and branding of products required—labeling of culls. (a) It shall be unlawful for any person, firm, association, organization, corporation or their agents or representatives or assistant of any person, firm, association, organization or corporation to pack for sale, expose for sale, or sell, transport, deliver or consign, or have in possession

for sale, transport, delivery or consignment in interstate or intrastate commerce,

(1) Montana farm products and other farm products prepared for market which are not graded and branded to meet the requirement of the grade declared. The grade declared shall conform to the provisions of this act.

(2) Other farm products which includes products arriving or found in Montana in containers not graded and branded must meet the requirements of United States No. 1 grade or better. Those products which do not grade United States No. 1 or better must be labeled or tagged with proper grade according to Montana inspection.

(b) Provided that Montana farm products and other farm products not conforming to established grades may be sold if labeled, tagged or branded in the same manner as graded products, except that in place of specifying the grade, the word "culls" or "unclassified" shall be used.

(c) Provided that all products branded "unclassified" must contain at least fifty per cent (50%) of products which would grade United States No. 2, or better.

(d) Provided further that Montana farm products and other farm products for seed purposes may be sold when graded under rules approved by the commissioner of agriculture and plainly labeled, tagged or branded "For Seed Purposes."

(e) Provided further that United States commercial grade shall be a standard grade in the state of Montana.

(f) Provided further that oranges labeled "choice" shall meet the requirements of the United States No. 2 grade or better for oranges.

History: En. Sec 4, Ch. 165, L. 1933; amd. Sec. 1, Ch. 71, L. 1937; amd. Sec. 1, Ch. 30, L. 1963; amd. Sec. 4, Ch. 79, L. 1969.

Amendments

The 1969 amendment designated the latter portion of subsection (a) as sub-

division (1), inserted "Montana farm products and other" before "farm products prepared for market," added subdivision (2); inserted "Montana farm products and other" before "farm products" in subsections (b) and (d) and added subsection (f).

3-1405. (3633.5) Unlawful to sell or transport products unless labeled, tagged or branded—use of tags. (a) It shall be unlawful for any person, firm, association, organization or corporation, or agent, representative or assistant to any person, firm, association, organization or corporation, to expose for sale, or sell, transport, deliver or consign, or have in possession Montana farm products and other farm products prepared for market unless each container has been legibly and conspicuously tagged, branded, labeled or stenciled before being moved from the premises of the person or persons responsible for the grading and packing, the name of the grade, when applicable together with the true net contents expressed in weight.

(b) When tags are used, United States No. 1 grade shall be declared on a white tag, and United States No. 2 grade shall be declared on a red tag. Bulk shipments shall be accompanied by two (2) cards not less than four by six inches (4" x 6") in size, placed on the inside of the car near each door. Likewise cards in size herein described shall be prominently placed on all bulk shipments made by truck or other conveyance.

Upon each card shall appear the name and address of the consignor, the name of the grade, if applicable, the name of the loading station, the date of loading and the name and address of the consignee, if known. It shall be conclusive evidence that the farm products are deemed for sale when the containers are packed for delivery or transit, or when same are exposed for sale, or when same are in process of delivery or transit, or located at a depot, station, boat dock, or any place where farm products, or other products are held for storage, or for immediate or future sale or transit.

History: En. Sec. 5, Ch. 165, L. 1933;
amd. Sec. 5, Ch. 79, L. 1969.

other" before "farm products" and "when applicable" after "the name of the grade"; and in subsection (b), inserted "if applicable" after "the name of the grade."

Amendments

The 1969 amendment, in subsection (a), inserted "Montana farm products and

3-1406. (3633.6) Inspection of condition of products in storage or transit. Montana farm products and other farm products held in storage or in transit which at the time of inspection show deterioration or decay, but otherwise up to the grade, shall be inspected as to condition and not as to grade.

History: En. Sec. 6, Ch. 165, L. 1933;
amd. Sec. 6, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "Montana farm products and other" at the beginning of this section.

3-1407. (3633.7) Enforcement of act. The commissioner of agriculture is hereby charged with the enforcement of this act and is given power unto himself and to his duly appointed representatives to enter into and upon the premises where Montana farm products and other farm products are graded or packed or stored, to inspect the same as to grade, pack and condition.

History: En. Sec. 7, Ch. 165, L. 1933;
amd. Sec. 7, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "Montana farm products and other" before "products."

3-1409. (3633.9) Intent and purpose of act. The intent and purpose of this act is to regulate the sale of Montana farm products and other farm products for table use intended for interstate or intrastate commerce when such is made by the grower, dealer or distributor, or any other person either by wholesale or retail or in any other manner; provided, however, that the provisions of this act shall not apply to the grower in the sale of the Montana farm products and other farm products grown by himself or to small retail packages.

History: En. Sec. 9, Ch. 165, L. 1933;
amd. Sec. 8, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "Montana farm products and other" before "farm products" in two instances in this section.

3-1410. (3633.10) Violation of provisions—penalty. Whoever violates this act by not grading Montana farm products and other farm products as herein required, or by not tagging or branding containers as herein re-

quired, or by removing or altering any tag or brands placed upon or attached to any containers as in this act required, unless ordered to do so by the commissioner of agriculture, or his duly appointed representative or representatives, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars (\$10.00), nor more than one hundred dollars (\$100.00), or by imprisonment in the county jail not less than thirty (30) days nor more than three (3) months, or by both such fine and imprisonment in accordance with the discretion of the court.

History: En. Sec. 10, Ch. 165, L. 1933;
amd. Sec. 9, Ch. 79, L. 1969.

Amendments

The 1969 amendment inserted "Montana farm products and other" before "farm products."

CHAPTER 23—EGGS AND EGG DEALERS—LICENSE

Section

3-2301. Egg dealer's license—fee.

3-2306. Egg—when defined as unfit for human food.

3-2307. Imported eggs—labeling.

3-2310. Rules and regulations for enforcement of act to be made by commissioner.

3-2301. (2634.1) Egg dealer's license—fee. Every person engaged in the business of buying, selling or dealing in eggs, except those persons or firms who do not buy and sell at retail more than an average of 25 cases of eggs per month for any one year, other than those produced by fowl owned by such persons, shall obtain a license from the commissioner of agriculture for each establishment at which said business is conducted, and shall render to the commissioner of agriculture such reports as may be requested by said commissioner. The fee for such license shall be five dollars (\$5.00) per year for dealers buying eggs for sale at retail. The fee for such license shall be fifty dollars (\$50.00) per year for dealers buying eggs for resale at wholesale. All licenses shall be posted in a conspicuous place in each place of business. Licenses shall expire March 31st each year after the date of issuance.

History: En. Sec. 1, Ch. 189, L. 1931;
amd. Sec. 1, Ch. 151, L. 1939; amd. Sec. 4,
Ch. 121, L. 1965; amd. Sec. 1, Ch. 176, L.
1969.

Amendments

The 1969 amendment inserted "at retail" after "who do not buy and sell" in the first sentence and raised the license fee for dealers buying eggs for resale at wholesale from \$20.00 to \$50.00.

3-2306. (2634.6) Egg—when defined as unfit for human food. Eggs hereinafter defined shall be deemed unfit for human food:

(a) to (i) * * * [Same as parent volume.]

(j) An egg that is smashed or broken so that the contents are leaking.

(k) Eggs which are otherwise unwholesome or adulterated as such term is defined pursuant to the Federal Food, Drug and Cosmetic Act, and rules and regulations promulgated under authority of this act.

History: En. Sec. 6, Ch. 189, L. 1931;
amd. Sec. 3, Ch. 151, L. 1939; amd. Sec.
2, Ch. 176, L. 1969.

Compiler's Notes

The definition of adulterated food in the Federal Food, Drug and Cosmetic Act is

contained in United States Code, Tit. 21,
sec. 342.

Amendments

The 1969 amendment added subdivisions
(j) and (k).

3-2307. (2634.7) Imported eggs—labeling. All candled and graded eggs imported into the state of Montana must comply with the requirements of this act and must be inspected and passed by licensed Montana egg graders. The case or container and cartons in which they are shipped shall have the word “eggs” preceded by the name of the country or state where produced displayed thereon in legible boldface type letters at least three-sixteenths (3/16) inches high.

All wholesalers and retailers of said eggs shall sell them from the container in which he received them or may transfer said eggs to other containers or cartons having the word “eggs” preceded by the name of the country or state where produced displayed thereon in boldface type letters at least three-sixteenths (3/16) inches high.

History: En. Sec. 7, Ch. 189, L. 1931;
amd. Sec. 4, Ch. 151, L. 1939; amd. Sec. 3,
Ch. 176, L. 1969.

tion and, inter alia, deleted requirement
that restaurants, etc. using foreign eggs
should conspicuously display a sign, in
four-inch lettering, to that effect.

Amendments

The 1969 amendment rewrote this sec-

3-2310. (2634.10) Rules and regulations for enforcement of act to be made by commissioner. It shall be the duty of the commissioner of agriculture to enforce the provisions of this act and to make such rules and regulations as may be necessary for the enforcement of this act, including the processing, handling and marketing of egg products whether shell, liquid, frozen or dried.

History: En. Sec. 10, Ch. 189, L. 1931;
amd. Sec. 4, Ch. 176, L. 1969.

Amendments

The 1969 amendment added “including
the processing * * * or dried” at the end
of the section.

CHAPTER 24—DAIRIES AND DAIRY PRODUCTS—REGULATION OF PRODUCTION AND SALE

3-2432, 3-2433. (2620.32, 2620.33) Repealed.

Repeal

Sections 3-2432 and 3-2433 (Secs. 29, 30,
Ch. 93, L. 1929; Sec. 7, Ch. 39, L. 1931;
Sec. 1, Ch. 168, L. 1933), relating to

standard measures for dairy products,
were repealed by Sec. 43, Ch. 99, Laws
1969.

CHAPTER 29—WHEAT RESEARCH AND MARKETING

Section

3-2914. Commissioner to report.

3-2914. Commissioner to report. The commissioner of agriculture and the chief of the wheat research and marketing division shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 14, Ch. 314, L. 1967;
amd. Sec. 5, Ch. 93, L. 1969.

Amendments

The 1969 amendment rewrote this sec-
tion which formerly required annual re-
ports.

TITLE 4—ALCOHOLIC BEVERAGES

Chapter

1. State Liquor Control Act of Montana—licensing—sale of alcoholic beverages by state liquor stores, 4-116.
2. State Liquor Control Act of Montana (continued)—interdiction and other enforcement provisions—finance—miscellaneous, 4-227, 4-240.
3. Montana Beer Act—licensing sale of beer under supervision of state liquor control board, 4-317, 4-324, 4-347.

CHAPTER 1—STATE LIQUOR CONTROL ACT OF MONTANA—LICENSING— SALE OF ALCOHOLIC BEVERAGES BY STATE LIQUOR STORES

Section

4-116. Provisions concerning sale of liquor and beer by vendors.

4-101. (2815.60) Citation of State Liquor Control Act, etc.

Compiler's Notes

Chapter 238, Laws 1969 provided for the issuance and sale of bonds by the state board of examiners for the purpose of

acquiring a site for and erecting a warehouse and administration building for the Montana Liquor Control Board.

4-116. (2815.71) Provisions concerning sale of liquor and beer by vendors. A vendor may sell to any person such liquor as that person is entitled to purchase in conformity with the provisions of this act and the regulations made thereunder, provided that no delivery shall take place until the purchaser has paid the purchase price.

History: En. Sec. 12, Ch. 105, L. 1933; amd. Sec. 4, Ch. 154, L. 1965; amd. Sec. 1, Ch. 162, L. 1969.

Amendments

The 1969 amendment deleted the subsection (1) designation at the beginning of the section and added the proviso; deleted subsection (2) which prohibited

delivery before vendor had received a written order and had been paid the purchase price in cash and deleted subsection (3) which provided that a vendor might sell and deliver beer provided that no delivery should take place until the purchaser had paid in the manner by prescribed regulations.

CHAPTER 2—STATE LIQUOR CONTROL ACT OF MONTANA (continued)— INTERDICTION AND OTHER ENFORCEMENT PROVISIONS— FINANCE—MISCELLANEOUS

Section

4-227. Reports to state examiner—biennial reports—contents.

4-240. License tax on liquor—amount—distribution of proceeds.

4-227. (2815.152) Reports to state examiner—biennial reports—contents. (1) Effective July 1, 1949 the board shall from time to time make reports to the state examiner covering such matters in connection with administration or enforcement of this act as he may require, and shall also report as provided in section 2 [82-4002] of this act.

(2) The books and records of the board shall be at all times subject to examination and audit by the state examiner or his duly authorized agents or employees.

History: En. Sec. 92, Ch. 105, L. 1933; amd. Sec. 1, Ch. 86, L. 1949; amd. Sec. 6, Ch. 93, L. 1969.

Amendments

The 1969 amendment, in subsection (1), substituted the provision for section 82-4002 biennial reports for the former pro-

vision for annual reports, deleted subdivisions (a) through (c), which provided for contents of the reports; deleted subsection (2), which provided for laying the reports before the legislature and redesignated former subsection (3) as subsection (2).

4-240. License tax on liquor—amount—distribution of proceeds. The Montana liquor control board is hereby authorized and directed to charge, receive and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of four per centum (4%) of the retail selling price on all liquor so sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the Montana liquor control board. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by said board. Said four per centum (4%) license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The Montana liquor control board shall retain the amount of such four per centum (4%) license tax so received in a separate account and shall apportion said license tax to the treasurers of the counties according to the amount of liquor sold by said board to the purchasers in each county. Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the board shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in section 4-241, R. C. M. 1947. The Montana liquor control board shall pay quarterly to each county treasurer the proportion of the license tax due each county.

The county treasurer of each county shall retain one-fourth ($\frac{1}{4}$) of said license tax, and shall, within thirty (30) days after receipt thereof, apportion the remaining three-fourths ($\frac{3}{4}$) thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sale of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his said county.

History: En. Sec. 1, Ch. 217, L. 1957; amd. Sec. 1, Ch. 153, L. 1969.

Amendments

The 1969 amendment inserted the sixth sentence of the first paragraph.

CHAPTER 3—MONTANA BEER ACT—LICENSING SALE OF BEER UNDER SUPERVISION OF STATE LIQUOR CONTROL BOARD

Section

4-317. Licenses of brewers—persons to whom brewers may sell beer—barrelage tax.

4-324. Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons.

4-347. Revenue to be paid to state treasurer—disposition of revenue.

4-317. (2815.22) Licenses of brewers—persons to whom brewers may sell beer—barrelage tax. (1) * * * [Same as parent volume.]

(2) In addition to the annual license tax imposed by section 4-341, a

tax of one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the board under the provisions of section 4-311; provided, however, that for the biennium ending June 30, 1971, the tax per barrel of thirty-one (31) gallons levied by this section shall be three dollars (\$3).

History: En. Sec. 13, Ch. 106, L. 1933; amd. Sec. 4, Ch. 46, Ex. L. 1933; amd. Sec. 4, Ch. 166, L. 1951; amd. Sec. 1, Ch. 135, L. 1959; amd. Sec. 1, Ch. 296, L. 1969.

Amendments

The 1969 amendment added the proviso at the end of subsection (2).

Temporary

Section 4. For the biennium ending June 30, 1971, all revenue received from taxes on beer under sections 4-317 and 4-324, R. C. M. 1947, over and above one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons shall be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the earmarked revenue fund. The state treasurer shall, monthly, distribute this amount of money

to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the 1960 federal census. For cities and towns incorporated after 1960, the census shall be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it shall cease to receive any funds under this section and the amount previously distributed to the city or town shall be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section shall be expended for state purposes such as law enforcement, maintenance of the transportation system, and public health.

4-324. (2815.29) Tax on imported beer—computation in case of barrels of capacity other than thirty-one gallons. A tax of one dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons, is hereby levied and imposed on each and every barrel of beer manufactured out of this state and sold herein by any wholesaler, which said tax shall be due at the end of each month from said wholesaler, upon any such beer so sold by him during that month. As to any beer imported and sold in containers other than barrels, or in barrels of more or less capacity than thirty-one (31) gallons, the quantity content shall be ascertained and computed by the board in determining the amount of tax due, as herein provided for: provided, however, that for the biennium ending June 30, 1971, the tax per barrel of thirty-one (31) gallons levied by this section shall be three dollars (\$3).

History: En. Sec. 20, Ch. 106, L. 1933; amd. Sec. 8, Ch. 46, Ex. L. 1933; amd. Sec. 2, Ch. 135, L. 1959; amd. Sec. 2, Ch. 296, L. 1969.

Amendments

The 1969 amendment added the proviso at the end of this section.

Temporary

Section 4. For the biennium ending June 30, 1971, all revenue received from taxes on beer under sections 4-317 and 4-324, R. C. M. 1947, over and above one

dollar and fifty cents (\$1.50) per barrel of thirty-one (31) gallons shall be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the earmarked revenue fund. The state treasurer shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the 1960 federal census. For cities and towns incorporated after 1960, the census shall be determined

as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it shall cease to receive any funds under this section and the amount previously distributed to the city or town shall be distributed to the

remaining incorporated cities and towns. All funds received by cities and towns under this section shall be expended for state purposes such as law enforcement, maintenance of the transportation system, and public health.

4-347. (2815.50) Revenue to be paid to state treasurer—disposition of revenue. Except as provided in section 4 of this act, all fees, charges, taxes and revenues collected by or under authority of the Montana liquor control board, under the Montana Beer Act shall be paid over to the state treasurer on or before the tenth day of each and every month who shall deposit said funds to the credit of the state general fund.

History: En. Sec. 49, Ch. 106, L. 1933; amd. Sec. 17, Ch. 46, Ex. L. 1933; amd. Sec. 20B, Ch. 109, L. 1935; amd. Sec. 9, Ch. 14, L. 1941; amd. Sec. 1, Ch. 121, L. 1949; amd. Sec. 20, Ch. 249, L. 1967; amd. Sec. 3, Ch. 296, L. 1969.

Compiler's Notes

Section 4 of this act is set out as a note to sections 4-317 and 4-324.

Amendments

The 1969 amendment inserted "Except as provided in section 4 of this act."

Separability Clause

Section 5 of Ch. 296, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

TITLE 5—BANKS AND BANKING

Chapter

5. Miscellaneous regulatory provisions, 5-523, 5-527.
9. Examination and supervision—state examiner's fund, 5-902.

CHAPTER 5—MISCELLANEOUS REGULATORY PROVISIONS

Section

- 5-523. Limitations on loans—liabilities—what included therein—reduction when excessive.
- 5-527. Interest not to exceed lawful rate—permissible charges on installment loans.

5-523. (6014.48) Limitations on loans—liabilities—what included therein—reduction when excessive. The total loans to any person, copartnership or corporation by any bank, including loans to a copartnership, and loans to the several members thereof, shall at no time exceed twenty per centum (20%) of the amount of the unimpaired capital and surplus of such bank. The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating the same, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, shall not be considered as money borrowed, nor shall the foregoing limitations apply to loans and investments secured by obligations of the United States having a value of one hundred per cent (100%) of the amount thereof or to loans made on warehouse receipts and bills of lading, when such warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least one hundred twenty per cent (120%) of the amount loaned thereon. Loans or obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase the same, made by any federal reserve bank or by the United States or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States.

The combined liabilities of the several members of any firm, copartnership or unincorporated association to the loaning bank shall be included in the liabilities of such firm, copartnership or unincorporated association, and the liabilities of such firm, copartnership or unincorporated association shall be included in the liabilities of any member thereof in determining the foregoing limitations.

When in the judgment of the superintendent of banks, the liabilities of any corporation or the combined liabilities of any corporation and one or more of its stockholders to any bank are excessive, he shall require the reduction thereof to such limits and within such time as he shall prescribe.

History: En. Sec. 44, Ch. 89, L. 1927; amd. Sec. 1, Ch. 71, L. 1943; amd. Sec. 1, Ch. 6, 1969.

Amendments

The 1969 amendment inserted "to loans

and investments secured by obligations of the United States having a value of one hundred per cent (100%) of the amount thereof or" in the second sentence of the first paragraph.

5-527. (6014.52) Interest not to exceed lawful rate—permissible charges on installment loans. No bank shall demand or receive for loans or discounts, a rate of interest exceeding that allowed by law, excepting that it shall be lawful for any bank to receive interest in advance according to the ordinary usages of banking institutions. On loans to be repaid in one or more deferred installments a bank may charge not to exceed the following schedule: On so much of the principal balance as does not exceed three hundred dollars (\$300), eleven dollars (\$11) per one hundred dollars (\$100) per year; if the principal balance exceeds three hundred dollars (\$300), but is less than one thousand dollars (\$1,000), nine dollars (\$9) per one hundred dollars (\$100) per year on that portion over three hundred dollars (\$300); if the principal balance exceeds one thousand dollars (\$1,000), seven dollars (\$7) per one hundred dollars (\$100) per year on that portion over one thousand dollars (\$1,000). Such charges shall be computed on the principal balance on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total balance thereof is required to be paid in installments. A minimum charge of twenty dollars (\$20) may be made with respect to any installment loan made by a bank. When an installment loan contract provides for payment other than in equal successive monthly installments the charge may be at a rate which will provide the same yield as is permitted monthly payment contracts having due regard for the schedule of payments in the contract.

History: En. Sec. 48, Ch. 89, L. 1927; amd. Sec. 1, Ch. 239, L. 1969.

Amendments

The 1969 amendment added provisions relating to permissible charges on installment loans.

CHAPTER 9—EXAMINATION AND SUPERVISION—
STATE EXAMINER'S FUND

Section

5-902. Reports and records of superintendent.

5-902. (6014.76) Reports and records of superintendent. The superintendent of banks shall keep all proper records and files pertaining to the duties and work of his office, and shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 72, Ch. 89, L. 1927; amd. Sec. 7, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the

reference to section 82-4002 for specific provisions relating to the contents, printing and distribution of the annual reports to the governor.

CHAPTER 11—CLOSING AND LIQUIDATION OF BANKS

5-1124. (6014.154) Repealed.**Repeal**

Section 5-1124 (Sec. 1, Ch. 129, L. 1931), relating to maintenance of offices of consolidated banks, was repealed by Sec. 1, Ch. 205, Laws 1969. Section 2 of the re-

pealing act provided that the repeal did not affect any transaction, proceeding or application pending or consummated on or prior to effective date of repeal.

TITLE 6—BONDS AND UNDERTAKINGS

CHAPTER 4—PUBLIC WORKS CONTRACTOR'S BOND

6.402. (5668.42) Notice to contractor of furnishing provender, etc.

Raising Lack of Notice as Defense

In action by materialman against general contractor for material supplied subcontractor, general contractor could not raise affirmative defense that statutory notice was not given for first time upon submitting proposed findings of fact and conclusions of law where materialman alleged that he had complied with all conditions precedent to bringing the suit and general contractor entered a general denial since general denial did not put notice in issue. *Treasure State Industries, Inc. v. Leigland*, 151 M 288, 443 P 2d 22.

Waiver of Notice

In an action by materialman against general contractor for materials supplied subcontractor, general contractor waived right to notice from materialman where he knew from beginning that the materialman was supplying masonry materials to subcontractor for the job and consented thereto. *Treasure State Industries, Inc. v. Leigland*, 151 M 288, 443 P 2d 22.

TITLE 8—CARRIERS AND CARRIAGE

Chapter

1. Motor carriers—license and regulation, 8-101, 8-103.1 to 8-103.3, 8-127.

CHAPTER 1—MOTOR CARRIERS—LICENSE AND REGULATION

Section

- 8-101. Definition of terms.
- 8-103.1. Leasing of power equipment.
- 8-103.2. Interchange of equipment.
- 8-103.3. Lease of Montana railroad commission certificate.
- 8-127. Additional fees covering motor carriers.

8-101. (3847.1) Definition of terms. Unless the language or context clearly indicates that different meanings are intended, the following words, terms and phrases shall, for the purposes of this act, be given the meanings hereinafter subjoined to them.

(a) to (g). * * * [Same as parent volume.]

(h) The term “motor carrier,” when used in this act, means every person or corporation, their lessees, trustees, or receivers appointed by any court whatsoever, operating motor vehicles upon any public highway in the state of Montana for the transportation of persons and/or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking; provided that nothing in this act shall be construed as affecting motor vehicles used in carrying property consisting of ordinary livestock or agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation, or, the operation of school buses which are used in conveying school children to and from district or other schools, or the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by any person, firm or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, in so far as the use of employees, supplies and materials in construction and production is concerned, or the transportation of property by motor vehicle within any city, town, or village with a population, according to the latest United States census, of less than five hundred persons, or within the commercial areas thereof as determined by the board, or the transportation of newspapers, newspaper supplements, periodicals or magazines, or those tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked or disabled vehicles or while such tow trucks and wreckers are rendering assistance to abandoned, wrecked or disabled vehicles, or ambulances.

(i) to (k). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 184, L. 1931; amd. Sec. 1, Ch. 153, L. 1943; amd. Sec. 1, Ch. 262, L. 1947; amd. Sec. 1, Ch. 204, L. 1963; amd. Sec. 1, Ch. 190, L. 1969.

Amendments

The 1969 amendment added “or the transportation of newspapers * * * or ambulances” at the end of subdivision (h).

8-103.1. Leasing of power equipment. All class A, B and C carriers subject to the jurisdiction of the board of railroad commissioners may lease power equipment for the purpose of performing transportation movements within the state of Montana. The leasing of such power units must be in writing and effective only upon specific approval of the board. Movement of such leased units without prior approval of the board is prohibited.

All leases must contain (1) the full names and addresses of negotiating parties, (2) a complete description of each vehicle involved, (3) provision that the sole possession, responsibility, control and direction of each vehicle and its driver resides with the lessee for the entire term of the lease, (4) provision that the lessee assumes full responsibility for all regulatory fees, (5) amount of compensation to be paid for use of the vehicle while under the lease and the method by which such compensation is determined, (6) the renewal conditions of the lease, if any, and (7) the term length of the lease.

A copy of the lease, certified by the board, must be maintained in each leased vehicle at all times.

Each power unit so leased must display in a conspicuous place on both sides of such vehicle the identity and address of the lessor, and lessee, and the certificate number under which the power unit is operating. The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited.

History: En. 8-103.1 by Sec. 1, Ch. 105, L. 1969.

Title of Act

An act providing that all authorized carriers within the state may lease power equipment for the purpose of performing transportation movements, providing further that the leasing of such power units

must be in writing and effective only upon specific approval of the board, setting forth the provisions required in the lease, providing that a copy of the lease, approved by the board, be maintained in each leased vehicle, providing for proper decals on each leased vehicle, leasing of power units by an authorized carrier to a noncertified carrier prohibited.

8-103.2. Interchange of equipment. Common carriers authorized by the board may enter into interchange agreements with other authorized common carriers providing for the interchange of equipment. Such agreements must be joint applications made to the board by the carriers affected. To be approved by the board the interchange must take place at a fixed terminal where the carriers' routes intersect. Manifests, waybills or agreements and all shipping data must be in the possession of the operator of the interchanged equipment. When an interchange has been authorized such equipment shall be operated only by the certificate holder over whose route such equipment is being operated. Interchange agreements between contract carriers, class C, is prohibited.

History: En. 8-103.2 by Sec. 1, Ch. 106, L. 1969.

Title of Act

An act providing for authorized common carriers to enter into interchange agreements with other authorized common carriers, providing for joint applica-

tions for such agreements, providing that the interchange must take place at a fixed terminal where the carriers' routes intersect, providing further for shipping data to be in the possession of the operator of the interchanged equipment, interchange agreements between contract carriers prohibited.

8-103.3. Lease of Montana railroad commission certificate. An authorized carrier operating with the state of Montana may lease its certificate,

or any integral segment thereof, to another carrier only by approval of the board. The contract or lease, under which the certificate is leased, must be in writing and approved by the board prior to any operation under the certificate. The contract or lease must specify: (a) the period for which a certificate is to be leased, which shall not be less than (30) days; (b) the compensation to be paid; (c) the time or date upon which the lease will commence and terminate; (d) and the signatures of the parties thereto. Operation under the certificate is prohibited until approved by the board in writing. During the period of the contract or lease transportation movements under the contract or lease must be performed by the entity contracting for or leasing the certificate, or any integral segment thereof, while transportation movements by the owner, lessor, is prohibited.

History: En. 8-103.3 by Sec. 1, Ch. 107, L. 1969.

Title of Act

An act providing that authorized carriers within the state may lease operating certificates, or any integral segment thereof, upon board approval; providing that the contract or lease must be in writing and specifying the provisions contained there-

in; providing that transportation movements under the certificate be prohibited until approved by the board in writing. Transportation during the term of the contract or lease to be performed by the entity contracting for or leasing certificate; transportation during the term of the contract or lease by the owner, lessor, is prohibited.

8-127. (3847.27) Additional fees covering motor carriers. In addition to all other licenses, fees and taxes imposed upon motor vehicles in this state and in consideration of the use of the highways of this state, every motor carrier holding a certificate of public convenience and necessity or permit issued by the board of railroad commissioners, shall between the first and fifteenth days of January, April, July and October of each year, file with the board of railroad commissioners a statement showing the gross operating revenue of such carrier for the preceding three (3) months of operation, or portion thereof, and shall pay to the board a fee of one-half ($\frac{1}{2}$) of one (1) per cent of the amount of such gross operating revenue; provided, however, that for the two taxable years commencing on or after April 1, 1969, the fee shall be five hundred seventy-five thousandths (.575) of one per cent of the amount of such gross operating revenue; and in the event that such carrier operates in interstate commerce, the gross operating revenue of such carrier within this state shall be deemed to be all the revenue received from business beginning and ending within this state, and a proportion based upon the proportion of the mileage within this state to the entire mileage over which the business is done of revenue on all business passing through, into or out of this state; provided, however, that the minimum fee which shall be paid by each class A and class B carrier for each vehicle registered and/or operated under the provisions of the Motor Carrier Act shall be thirty dollars (\$30.00) and the minimum annual fee which shall be paid by each class C carrier for each vehicle registered and/or operated under the Motor Carrier Act shall be fifteen dollars (\$15.00); provided, however, that the minimum annual fee provided by this section shall not apply to either new or used vehicles operated under their own power where such vehicle is being delivered to a dealer and will only be transported once.

History: En. Sec. 2, Ch. 100, L. 1935; amd. Sec. 2, Ch. 73, L. 1947; amd. Sec. 1, Ch. 162, L. 1951; amd. Sec. 1, Ch. 6, Ex. L. 1969.

Amendments

The 1969 amendment inserted the proviso setting the fee for the biennium commencing on April 1, 1969.

Repealing Clause

Section 2 of Ch. 6, Ex. Laws 1969 read "Section 8-128, R. C. M. 1947, is repealed."

Effective Date

Section 3 of Ch. 6, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

8-128. (3847.28) Repealed.

Repeal

Section 8-128 (Sec. 3, Ch. 100, L. 1935), relating to the disposition of fees collected

from motor carriers, was repealed by Sec. 2, Ch. 6, Ex. Laws 1969.

TITLE 10—CHILDREN AND CHILD WELFARE

Chapter

6. Juvenile courts and proceedings against juvenile delinquents, 10-602, 10-603, 10-604.1, 10-605.1, 10-607, 10-608.1, 10-610, 10-611, 10-613, 10-622, 10-623, 10-625, 10-626, 10-628, 10-630.

CHAPTER 6—JUVENILE COURTS AND PROCEEDINGS AGAINST JUVENILE DELINQUENTS

Section

- 10-602. Definitions.
10-603. Jurisdiction.
10-604.1. Right to jury trial—drawing the jury.
10-605.1. Preliminary inquiry—disposition—petition.
10-607. Service of citation.
10-608.1. Taking child into custody—release—holding child until hearing—notification of apprehension.
10-610. Transfer from other courts.
10-611. Hearing—judgment.
10-613. Modification of judgment.
10-622. Probation officers—appointments—removal—salaries.
10-623. Duties and powers of the probation department.
10-625. Physical and mental examinations and treatment.
10-626. Place of detention.
10-628. Juvenile court committee.
10-630. Appeals.

10-602. Definitions. (1). * * * [Same as parent volume.]

(2) The words “delinquent child” include:

(a) * * * [Same as parent volume.]

(b) A child who has violated any law of the state.

(c) to (e). * * * [Same as parent volume.]

(f) A child who unlawfully, negligently, dangerously, or willfully operates a motor vehicle on the highways of the state or on the roads and streets of any county or city so as to endanger life or property, and a child who operates a motor vehicle on such highways, roads or streets while intoxicated or under the influence of intoxicating liquor, or any other driving infractions that show the child to be lacking parental supervision or a disrespect for the traffic laws of this state.

History: En. Sec. 2, Ch. 227, L. 1943; amd. Sec. 1, Ch. 276, L. 1947; amd. Sec. 1, Ch. 24, L. 1963; amd. Sec. 1, Ch. 262, L. 1969.

Amendments

The 1969 amendment, in subdivision (2) (b), deleted a proviso stating that a child over sixteen should be prosecuted as an adult for commission or attempted commission of enumerated felonies; and in subdivision (2) (f), added “or any other driving infractions * * * of this state.”

Involuntary Manslaughter

Conviction of involuntary manslaughter, arising from driving of automobile on public highway while intoxicated, was proper notwithstanding defendant's contention that since he was a juvenile and “delinquent child” within meaning of Juvenile Code, he could be punished only civilly for his acts and not criminally. *State v. Medicine Bull*, — M —, 445 P 2d 916.

10-603. Jurisdiction. The district courts of the several counties of this state shall have jurisdiction in all cases coming within the terms and pro-

visions of this act. It is provided that the district court shall be called the juvenile court when acting under the juvenile court laws.

The juvenile court shall have exclusive original jurisdiction in proceedings:

(a) concerning any child who is delinquent;

(b) concerning any person under twenty-one (21) years of age charged with having violated any law of the state or ordinance of any city or town prior to having become eighteen (18) years of age.

In traffic matters involving persons under twenty-one (21) years of age justice of the peace and police courts or such other courts as are designated by the legislature shall have concurrent jurisdiction as provided in section 32-21-163, R. C. M. 1947:

(c) when the juvenile court has jurisdiction of any child sixteen (16) years of age, or over, who is accused of committing or the attempt to commit murder, manslaughter, arson in the first or second degree, assault in the first or second degree, robbery, burglary, and carrying a deadly weapon with intent to assault, or who commits rape under the circumstances specified in subdivisions 3 and 4 of section 94-4101, R. C. M. 1947, then the county attorney may request the juvenile court to be permitted to file an information against the juvenile in district court, or, when the facts warrant, the juvenile judge may order the county attorney to proceed against the juvenile in district court on an information.

Before making such order the juvenile judge must hear the matter by an informal preliminary hearing to determine first, if there is probable cause to believe the juvenile has committed the felony, and, second, to determine whether under the circumstances it appears necessary for the best interest of the state that the juvenile be held to answer the information in district court.

After the information is filed in district court that court shall have full jurisdiction to proceed against the juvenile and shall proceed against him in the same manner as if he were an adult.

If the juvenile is found guilty in district court and is sentenced to the state prison, his commitment shall be to the department of institutions to be by them confined in whatever institution to them seems most proper;

(d) when jurisdiction shall have been obtained by the juvenile court in the case of any child, such jurisdiction shall continue until the child becomes twenty-one (21) years of age unless the child is ordered committed to a state custodial or correctional institution or to the state department of institutions;

(e) the county where a child is a resident shall have primary jurisdiction over any child charged with being a juvenile delinquent and the juvenile court of that county shall assume the handling of the cause. In the case of a juvenile sixteen (16) years of age or over who is accused of one of the serious offenses listed in subsection (c) of this section, the juvenile courts in the county where the offense occurred shall serve as the preliminary hearing court and if the juvenile is to be tried in district court the charge shall be filed and the trial held in the district court of the county where the offense occurred, otherwise the matter shall be transferred to the county where the child is a resident.

History: En. Sec. 3, Ch. 227, L. 1943; amd. Sec. 1, Ch. 123, L. 1945; amd. Sec. 2, Ch. 276, L. 1947; amd. Sec. 1, Ch. 124, L. 1957; amd. Sec. 2, Ch. 262, L. 1969.

Amendments

The 1969 amendment deleted "other than those laws relating to the commission of or attempt to commit the criminal offenses mentioned in subdivision (2) (b) of section 10-602" after "state" and made

other minor changes in phraseology in subdivision (b); deleted provisions of subdivision (c) as follows: "concerning parents who willfully and knowingly fail to provide their children with proper food, clothing, medical attention, and opportunity to attend school; deleted a provision relating to right to trial by jury, and added the provisions of subdivisions (c) to (e), inclusive.

10-604, 10-605. Repealed.

Repeal

Sections 10-604 and 10-605 (Sec. 4, Ch. 227, L. 1943; Sec. 1, Ch. 41, L. 1945) relating to the trial of juvenile cases by a

special jury and to the requirements of a petition showing that defendant is a juvenile, were repealed by Sec. 16, Ch. 262, Laws 1969.

10-604.1. Right to jury trial—drawing the jury. The juvenile in any case to be heard on a written petition charging delinquency shall have the right to demand a jury trial and shall have the right to be represented by counsel. The rights are deemed waived if not exercised. When a jury trial is required in a juvenile case, it may be held before the regular trial panel. However, if the regular panel is not in attendance, the court may draw a jury from jury box No. 3. Jury trials demanded in juvenile courts shall be granted as soon as possible.

History: En. Sec. 3, Ch. 262, L. 1969.

Title of Act

An act to generally revise the Montana Juvenile Code Title 10, chapter 6 by redefining delinquent child; placing the jurisdiction of persons under eighteen charged with violating any laws of the state or city ordinance with the juvenile court; allowing the county attorney under direction of the juvenile judge to file an information against a child sixteen or over who has committed murder, rape, arson,

manslaughter, robbery or burglary; deleting reference to separate facilities used for juveniles confined in the state prison; giving the district court judge discretionary power to appoint committees to assist him in juvenile matters; amending sections 10-602, 10-603, 10-607, 10-610, 10-622, 10-623, 10-625, 10-626, 10-628, 10-630, and 80-2204, R. C. M. 1947; and repealing sections 75-3001, 75-3002, 10-604, 10-605, 10-609, 10-618, 10-619, 10-620, and 10-632, R. C. M. 1947.

10-605.1. Preliminary inquiry—disposition—petition. (1) Whenever any person informs the court that a child is a delinquent as defined in this act the court shall cause, by citation or otherwise, the child to be brought before the court or the juvenile probation officer for the purpose of making a preliminary inquiry to determine whether the interests of the child or the public require that further action be taken. The matter may be handled by an informal adjustment including the placing of the child on probation, or the court may order the county attorney to file a petition charging the child with being a juvenile delinquent.

(2) If a petition is filed the proceeding shall be entitled, "In the matter of _____, a child under eighteen (18) years of age." Any record made on any juvenile matter shall not be open to public examination without order of the court.

(3) The petition shall be prepared and signed by the county attorney and shall contain a brief recitation of the facts which bring the child

within the provisions of this act, and, shall include such residence and other matters as will properly inform the court on the matter.

History: En. Sec. 4, Ch. 262, L. 1969.

10-607. Service of citation. (1) Written petition. Service of citation shall be made personally by the delivery of copies thereof to the person cited; provided that if the judge is satisfied that it is impracticable to serve personally such citation or the notice provided in the preceding section, he may order service by registered mail to their last known address, or by the publication thereof, or both, as he may direct. It shall be sufficient to confer jurisdiction if service is effected at least twenty-four hours before the time fixed in the citation for the return thereof.

Service of citation, process or notice required by this act may be made by any suitable person under the direction of the court.

(2) Citation for an informal hearing may order the child brought before the court immediately or at any time set by the court. The citation may command the child be brought before the court immediately in which case it must be directed to a peace officer and must be handled like a warrant of arrest.

History: En. Sec. 6, Ch. 227, L. 1943; first paragraph as subsection (1) and amd. Sec. 5, Ch. 262, L. 1969. inserted "Written petition"; deleted a former third paragraph which provided for reimbursement of probation officers; and added subsection (2).

Amendments

The 1969 amendment designated the

10-608.1. Taking child into custody—release—holding child until hearing—notification of apprehension. (1) Whenever any peace officer believes, on reasonable grounds, that any child is violating any law or ordinance or engaging in other conduct that would be grounds for finding the child a delinquent, or when the surroundings are such as to endanger his health, morals, or welfare unless immediate action is taken, then the peace officer shall take the child into custody in the same manner as for the arrest of an adult.

(2) Whenever the peace officer believes, on reasonable grounds, that the child can be released to a parent, guardian or other person who has had custody of the child, then the peace officer may release the child to that person or persons upon receiving a written promise from him or them to bring the child before the juvenile court or the juvenile probation officer at a time and place specified in the written promise.

(3) Whenever the peace officer believes, on reasonable grounds, that the child must be held in custody until his appearance in juvenile court, then the peace officer must deliver the child to the juvenile court or probation officer without undue delay. If it is necessary to hold the child pending appearance before the juvenile court then the child must be held in some place that has been approved by the juvenile court and completely separated from adult offenders.

(4) Whenever any peace officer has apprehended a child as hereinabove provided, he shall, as soon as practicable, notify the juvenile court or probation officer of such fact with a report of his reasons for the apprehension.

History: En. Sec. 6, Ch. 262, L. 1969.

10-609. Repealed.

Repeal release of children taken into custody,
 Section 10-609 (Sec. 8, Ch. 227, L. 1943; was repealed by Sec. 16, Ch. 262, Laws
 Sec. 3, Ch. 276, L. 1947), relating to the 1969.

10-610. Transfer from other courts. If, during the pendency of a criminal or quasi-criminal proceeding against any person in any other court, it shall be ascertained that said person was at the time of committing the alleged offense within the definition of "delinquent child" as set out in section 10-602, R. C. M. 1947, it shall be the duty of such court to transfer such case immediately, together with all papers, documents, and testimony connected therewith, to the juvenile court. The court making the transfer shall order the child to be taken forthwith to the place of detention designated by the juvenile court or to that court itself, or release such child in the custody of some suitable person, to appear before the juvenile court at a time designated. The juvenile court shall thereupon proceed to hear and dispose of such case in the same manner as if it had been instituted in that court in the first instance.

History: En. Sec. 9, Ch. 227, L. 1943; tence, substituted "proceeding" for
 amd. Sec. 4, Ch. 276, L. 1947; amd. Sec. 7, "charge"; and substituted reference to
 Ch. 262, L. 1969. section 10-602 generally for reference to
 subdivision (2) (b) of that section.

Amendments

The 1969 amendment, in the first sen-

10-611. Hearing—judgment. The court may conduct the hearing in an informal manner and may adjourn the hearing from time to time. In the hearing of any juvenile case, as distinguished from a case involving a child charged with the commission of or attempt to commit any of the criminal offenses set out in subdivision (2) (b) of section 10-602, the general public shall be excluded and only such persons admitted as have a direct interest in the case; provided, however, that whenever the hearing in the juvenile court is had on a written petition charging the commission of any felony, persons having a legitimate interest in the proceeding, including responsible representatives of public information media, shall not be excluded from such hearing. All cases involving children shall be heard separately and apart from the trial of cases against adults.

If the court shall find that the child is delinquent within the provisions of this act, it may by order duly entered proceed as follows:

(1) and (2). * * * [Same as parent volume.]

(3) Order such further care and treatment as the court may deem best for the best interests of the child, except as herein otherwise provided.

No commitment of any such delinquent child to any institution under this act shall be deemed commitment to a penal institution. No adjudication upon the status of any delinquent child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any delinquent child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of any crime in any court except as provided in the preceding section of this act. The disposition of

the delinquent child or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding.

Whenever the court shall commit a delinquent child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning such child.

Whenever a child or an adult under the age of twenty-one (21) years is convicted of a felony or felonies or attempt to commit a felony or felonies and is sentenced to imprisonment in the state prison, he shall, throughout the term of imprisonment or until such time as he reaches the age of twenty-one (21) years, have sleeping quarters separate and apart from inmates who are over the age of twenty-one (21) years, and additionally shall be kept separate and apart at other times in those areas where staff and facilities will permit.

History: En. Sec. 10, Ch. 227, L. 1943; amd. Sec. 5, Ch. 276, L. 1947; amd. Sec. 1, Ch. 132, L. 1961; amd. Sec. 2, Ch. 134, L. 1967; amd. Sec. 1, Ch. 227, L. 1969.

Compiler's Notes

Subdivision (2) (b) of section 10-602, referred to in the first paragraph, has been amended, deleting the provision concerning attempts or completion of enumerated felonies. For new law, see sec. 10-603.

Amendments

The 1969 amendment deleted the requirement in the last paragraph that inmate under twenty-one be separated at all times from those over twenty-one and substituted the present provision for separate sleeping quarters and separation at other times where staff and facilities permit.

Effective Date

Section 2 of Ch. 227, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 5, 1969.

10-613. Modification of judgment. Any order of the court may be modified at any time, except an order committing a child to the custody of a state custodial or correctional institution, or to the department of institutions.

History: En. Sec. 12, Ch. 227, L. 1943; amd. Sec. 2, Ch. 123, L. 1945; amd. Sec. 8, Ch. 262, L. 1969.

Compiler's Notes

The amendment of this section was not

mentioned in the Title of Ch. 262, Laws 1969.

Amendments

The 1969 amendment added "or to the department of institutions."

10-618 to 10-620. Repealed.

Repeal

Sections 10-618 to 10-620 (Secs. 17 to 19, Ch. 227, L. 1943; Sec. 8, Ch. 276, L. 1947), relating to the suspension of sen-

tence and posting of bond or undertaking in juvenile cases, were repealed by Sec. 16, Ch. 262, Laws 1969.

10-622. Probation officers—appointments—removal—salaries. In every judicial district of the state of Montana the judge thereof having jurisdiction of juvenile matters may appoint one discreet person of good moral character, who shall be known as the chief probation officer of such district and who shall hold his office until removed by the court. Such officer shall receive for his services such sum as shall be specified by the court upon appointment, provided that the judge of the district court may employ him on a yearly salary not to exceed nine thousand dollars (\$9,000), or on a per diem basis for the time actually and necessarily employed in performing the duties of the office. The salary of such officer shall be appor-

tioned among and paid by each of said counties in which said officer shall be appointed to act, in proportion to the assessed valuation of such counties for the year then current, except that where such official is appointed for one county, his salary shall be paid by that county.

The judge having jurisdiction of juvenile matters may also appoint such additional persons to serve as deputy probation officers as the judge deems necessary; their salaries to be fixed by the judge at the time of appointment, provided that such salaries shall not exceed ninety per cent (90%) of the salary of the chief probation officer.

For all necessary travel incident to his official duties in connection with the investigation, supervision, and transportation of children, the probation officer shall, in addition to his official salary, be reimbursed for actual expenses incurred.

History: En. Sec. 21, Ch. 227, L. 1943; Ch. 7, L. 1967; amd. Sec. 9, Ch. 262, L. 1969.
amd. Sec. 1, Ch. 116, L. 1947; amd. Sec. 1, Ch. 27, L. 1951; amd. Sec. 1, Ch. 112, L. 1953; amd. Sec. 1, Ch. 36, L. 1955; amd. Sec. 1, Ch. 177, L. 1957; amd. Sec. 1, Ch. 166, L. 1961; amd. Sec. 1, Ch. 115, L. 1963; amd. Sec. 1, Ch. 94, L. 1965; amd. Sec. 1, Ch. 7, L. 1967; amd. Sec. 9, Ch. 262, L. 1969.

Amendments

The 1969 amendment added the final paragraph.

10-623. Duties and powers of the probation department. The chief probation officer, under the direction of the judge, shall have charge of the work of the probation department. The probation department shall make such investigation as the juvenile court may direct, keep a written record of such investigations and submit the same to the judge, or deal with the same as the judge may direct. The department shall furnish to any delinquent child placed on probation or to any parent or guardian of such child a written statement of the conditions of probation, and shall keep informed concerning the conduct and condition of each person under its supervision, and shall report thereon to the judge as he may direct. Each probation officer shall use all suitable methods to aid persons on probation and bring about improvement in their conduct and condition. The probation department shall keep full records of its work, and shall keep accurate and complete accounts of money collected from persons under its supervision, and shall give receipts therefor and shall make reports thereupon as the judge may direct. Probation officers, for the purpose of this act, shall have the powers of police officers.

All information obtained in discharge of official duty by any officer or other employee of the juvenile court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this act to receive such information, unless and until otherwise ordered by the judge.

History: En. Sec. 22, Ch. 227, L. 1943; tence, deleted "or to any person within the purview of sections 10-617 and 10-618" before "placed on probation"; and inserted, after that phrase, "or to any parent or guardian of such child."
amd. Sec. 9, Ch. 276, L. 1947; amd. Sec. 10, Ch. 262, L. 1969.

Amendments

The 1969 amendment, in the third sen-

10-625. Physical and mental examinations and treatment. The court may cause any person coming under its jurisdiction to be examined by a physician, psychiatrist, [or] psychologist, appointed by the court.

Whenever a child, concerning whom a petition has been filed, appears to be in need of medical or surgical care, the court may order the parent, guardian or custodian to provide treatment for such child in a hospital or otherwise. If such parent, guardian, or custodian fails to provide such treatment, the court may, after due notice, enter an order therefor, and expense thereof, when approved by the court, shall be a charge upon the county; but the court may adjudge that the person or persons having the duty under the law to support such child pay part or all of the expenses of such treatment.

History: En. Sec. 24, Ch. 227, L. 1943; amd. Sec. 11, Ch. 262, L. 1969.

Compiler's Notes

The bracketed word "or" in the first paragraph was inserted by the compiler.

Amendments

The 1969 amendment deleted "in the manner provided in a preceding section of this act" from the end of the section.

10-626. Place of detention. Whenever it is necessary for any peace officer to detain any child under eighteen (18) years of age, or, whenever by order of the court or the chief probation officer it is necessary to detain any such child, then such child shall be detained in a room or ward which has been approved by the juvenile court judge. Such room or ward must assure that children are kept separated by sex and that they are not permitted to associate in any way with adults who are also being confined in the same building or area.

History: En. Sec. 25, Ch. 227, L. 1943; amd. Sec. 10, Ch. 276, L. 1947; amd. Sec. 12, Ch. 262, L. 1969.

Amendments

The 1969 amendment rewrote this section which formerly prohibited placing children under 18 in any prison, jail or lockup unless the child was a menace to

other persons, provided that a child over 16 charged with commission or attempt of felony formerly enumerated in section 10-602 or an adult under 21 charged with felony could be placed in jail in a room or ward separate from adults and stated that provision should be made temporary detention, boarding or care of children not charged with enumerated felony.

10-628. Juvenile court committee. In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three (3) nor more than seven (7) reputable citizens, which committee shall be designated as a juvenile court committee; this committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the juvenile department of the court, and shall act as a supervisory committee of detention homes, and in the selection of foster homes.

History: En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957; amd. Sec. 13, Ch. 262, L. 1969.

Amendments

The 1969 amendment substituted "may" for "must" before "appoint a committee."

10-630. Appeals. In the case of a delinquent child an appeal to the supreme court may be taken by the child or an aggrieved party in the manner provided by law or by rule of court for appeal in civil cases. In any case charging an adult with contributing to the delinquency of a child, an appeal may be taken to the supreme court in the manner provided by law or by rule of court for appeal in criminal cases. In any other case against an adult coming under this act an appeal may be taken to the

supreme court in the manner provided by law or by rule of court for appeal in civil cases. An appeal, in the case of a delinquent child, shall not suspend the order of the court, nor shall it discharge the delinquent child from the custody of that court or of the person, institution or agency to whose care such delinquent child shall have been committed unless that court shall so order.

On appeal the supreme court shall review the matter and may make such order as appears proper, including any necessary modification of the district court order.

History: En. Sec. 29, Ch. 227, L. 1943; amd. Sec. 11, Ch. 276, L. 1947; amd. Sec. 14, Ch. 262, L. 1969.

Amendments

The 1969 amendment substituted "child or an aggrieved party" for "party aggrieved" in the first sentence; and sub-

stituted the second paragraph for former fifth sentence which provided that court, if it did not dismiss proceeding, should affirm or modify the order and remand child to jurisdiction of the district court which should retain jurisdiction just as if no appeal had been taken.

10-632. Repealed.

Repeal

Section 10-632 (Sec. 33, Ch. 227, L. 1943; Sec. 84, Ch. 199, L. 1965), relating to the

effect of the juvenile court law on the institutional and welfare laws, was repealed by Sec. 16, Ch. 262, Laws 1969.

TITLE 11—CITIES AND TOWNS

Chapter

2. Classification and organization of cities and towns, 11-201.
6. Plats of cities and towns and additions thereto, 11-614, 11-614.2.
7. Officers and elections, 11-725.
9. Powers of city and town councils, 11-964.1, 11-964.2.
10. Powers of city and town councils (continued), 11-1024.
11. Ordinances—initiative and referendum, 11-1102.
12. Contracts and franchises, 11-1202.
13. Presentation and payment of claims—city warrants, 11-1310.
18. Police department, metropolitan police law, 11-1815, 11-1832.
19. Fire department—firemen's disability and pension fund, 11-1905, 11-1919, 11-1932.
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27. Building regulations—zoning commission, 11-2705.
32. Commission-manager form of government, 11-3248.
38. City or city-county planning boards, 11-3830.
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41. Industrial development projects, 11-4101.
44. Interlocal co-operation commission—improvement of essential local governmental services, 11-4401 to 11-4416.

CHAPTER 2—CLASSIFICATION AND ORGANIZATION OF CITIES AND TOWNS

Section

11-201. Cities and towns classified.

11-201. (4959) Cities and towns classified. Every city having a population of ten thousand or more is a city of the first class; every city having a population of less than ten thousand and more than five thousand is a city of the second class; every city having a population of less than five thousand and more than one thousand is a city of the third class; and every municipal corporation having a population of three hundred and less than one thousand is a town; provided, that every municipal corporation having a population of more than five thousand and less than seven thousand five hundred may by resolution adopted by the city council pursuant to sections 11-301 to 11-305 be either a second class city or a third class city; and provided, that every municipal corporation having a population of more than one thousand and less than twenty-five hundred, may by resolution adopted by the city or town council, as the case may be, pursuant to sections 11-301 to 11-305, be either a city or town. Nothing in this act shall be construed as affecting the status or classification of any existing city or town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R. C. M. 1921; amd. Sec. 1, Ch. 202, L. 1947; amd. Sec. 1, Ch. 126, L. 1969.

Amendments

The 1969 amendment inserted the proviso permitting municipal corporations of more than 5,000 and less than 7,500 population to be either a second or third class city.

CHAPTER 6—PLATS OF CITIES AND TOWNS AND ADDITIONS THERETO

Section

11-614. Small and irregularly shaped tracts must be platted, surveyed and certified before sale.

11-614.2. Instruments transferring tracts acquired for state highways.

11-614. (4993) Small and irregularly shaped tracts must be platted, surveyed and certified before sale. Any person who desires to subdivide and sell or transfer any tract of land in small tracts, such as orchard tracts, vineyard tracts, acreage tracts, suburban tracts, or community tracts, containing less than the United States legal subdivision of ten (10) acres, or who shall subdivide and/or sell or transfer any irregularly shaped tract of land, the acreage of which cannot be determined without a survey, must cause the same to be surveyed, platted, certified, and filed in the office of the county clerk and recorder of the county in which said land lies, according to the provisions of this chapter before any part or portion of the same is sold or transferred; except that it will not be necessary to comply with the provisions of this chapter relating to parks, playgrounds, and state highways, and such state highway sales or transfers may be made by reference to the plat or plan contemplated by section 32-2413, R. C. M. 1947, on file and the numbers of the lots and blocks or parcels. Said plat or plan contemplated by section 32-2413, R. C. M. 1947, shall be of a scale not less than one inch equals four hundred feet and have attached a certified copy of the state highway commission resolution establishing the location or reconstruction of such highway and shall be recorded in the office of the proper county clerk and recorder in a separate book kept for that purpose. The commission shall, at its expense, furnish each county clerk and recorder with an appropriate book which shall be indexed by project number, parcel number, cross-indexed by name of the owner affected. It is unlawful for any further sales to be made without a full compliance with the provisions of this chapter, and the surveying and platting of the whole tract, showing the lots sold before the filing of the plat; provided further that until the filing of such plat, or survey, the county clerk of any county shall not record any deed which conveyed, or purports to convey, any irregular shaped tract or part of land or parcel of any such platted tract or tracts of less than the United States legal subdivision of ten (10) acres, unless the person presenting such deed for record also delivers to such county clerk for filing a plat or map which has been prepared by a surveyor or civil engineer, which plat or map shall show with particularity the legal description, and area of the land to be conveyed, except that no map or plat shall be required in those cases where the parcel of land being conveyed has been previously conveyed by deed or other instrument recorded ten (10) years or more prior to the passage of this act.

History: En. Sec. 5013, Pol. C. 1895; re-en. Sec. 3478, Rev. C. 1907; amd. Sec. 5, Ch. 119, L. 1917; re-en. Sec. 4993, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1939; amd. Sec. 1, Ch. 180, L. 1945; amd. Sec. 1, Ch. 227, L. 1947; amd. Sec. 1, Ch. 295, L. 1969.

at the end of the first sentence, inserted references to state highways and the plan contemplated by section 32-2413, substituted "may" for "must" before "be made by reference to the plat" and added "or parcels" at the end of the sentence; and inserted the second and third sentences.

Amendments

The 1969 amendment, in the exception

11-614.2 Instruments transferring tracts acquired for state highways. Instruments of transfer of tracts defined in this section which are acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 32-2413, R. C. M. 1947, and are excepted from other platting requirements of this act; provided, however, that if such tracts are not shown on highway plans of record, instruments of transfer of such tracts shall be accompanied by appropriate certificates of survey and plats when presented for recording.

History: En. Sec. 2, Ch. 295, L. 1969.

Title of Act

An act relating to the platting, surveying and certification of small and irregularly shaped tracts before sale; amending section 11-614, R. C. M. 1947, to extend the exceptions to said section to include state highways, and to include therein

in addition to plats on file plans on file and to include therein in addition to lots and blocks, parcels.

Effective Date

Section 3 of Ch. 295, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

CHAPTER 7—OFFICERS AND ELECTIONS

Section

11-725. Salaries and qualifications of mayor and alderman.

11-725. (5019) Salaries and qualifications of mayor and alderman. The maximum annual salary of a mayor must be fixed by ordinance in all classes of cities. No person shall be elected to the office of mayor or alderman in any city or town who is not a resident and freeholder within the limits of the city or town.

History: En. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R. C. M. 1921; amd. Sec. 1, Ch. 50, L. 1943; amd. Sec. 1, Ch. 188, L. 1949; amd. Sec. 1, Ch. 115, L. 1951; amd. Sec. 1, Ch. 76, L. 1953; amd. Sec. 1, Ch. 170, L. 1955; amd. Sec. 1, Ch. 179, L. 1961; amd. Sec. 1, Ch. 142, L. 1963; amd. Sec. 1, Ch. 158, L. 1965; amd. Sec. 1, Ch. 224, L. 1967; amd. Sec. 1, Ch. 297, L. 1969.

Amendments

The 1969 amendment inserted "maximum" before "annual salary" and "in all classes of cities" after "ordinance" in the first sentence; deleted specific maximum salaries for mayors of first, second and third class cities; in the former second paragraph, deleted requirement that salaries of aldermen be fixed by ordinance and specific maximum salaries for alderman of first, second and third class cities, making the last sentence of the former second paragraph the present last sentence.

CHAPTER 9—POWERS OF CITY AND TOWN COUNCILS

Section

11-964.1. City or town authorized to sell or trade property to county or political subdivision—resolution and notice of intent.

11-964.2. City or town authorized to obtain property by trade or purchase from county or political subdivision—appraisal unnecessary.

11-932. (5039.29) Regulation of explosives and inflammable material.

Gasoline Within Three-Mile Limit

Ordinance regulating installation and use of coin-operated gasoline dispensing devices located outside, but within three

miles of city limits was proper exercise of city's authority under statute. State ex rel. Pat Griffin Co. v. City of Butte, 151 M 546, 445 P 2d 739.

11-958. (5039.55) Repealed.**Repeal**

Section 11-958 (Subd. 56, Sec. 5039, R. C. M. 1921; Sec. 1, Ch. 115, L. 1925; Sec. 1, Ch. 20, L. 1927), relating to the

power of city and town councils to establish standard weights and measures was repealed by Sec. 43, Ch. 99, Laws 1969.

11-964.1. City or town authorized to sell or trade property to county or political subdivision—resolution and notice of intent. A city or town upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for three (3) weeks in a newspaper published in such city or town or county in which located, shall have power to sell or trade, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the city or town business, to any county or political subdivision, without an ordinance, public notice, public auction, bids, or appraisal; proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of councils or commissions involved and entered in the minutes of the regular or special meetings.

History: En. Sec. 1, Ch. 301, L. 1969.

Title of Act

An act to permit cities or towns power

to sell or trade property to any county or political subdivision; and to provide for the purchase thereof, by a city or town without appraisal.

11-964.2. City or town authorized to obtain property by trade or purchase from county or political subdivision—appraisal unnecessary. A city or town shall have power to trade with, or purchase from, any county or political subdivision such property without an appraisal of the property traded or purchased.

History: En. Sec. 2, Ch. 301, L. 1969.

purchase property, secs. 16-1007.1 and 16-1009.1.

Cross-References

Counties authorized to sell, trade or

11-980. (5039.77) Printing contract.**Cross-References**

Printing defined, sec. 19-103.1.

CHAPTER 10—POWERS OF CITY AND TOWN COUNCILS (continued)

Section

11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions.

11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees—authority—approval of employees—limit on contributions. All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities, and towns shall upon approval by two-thirds (2/3) vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and town, to enter into group hospitalization, medical, health, accident and/or

group life insurance contracts or plans for the benefit of their officers, employees, and their dependents, and the respective administrative and governing bodies pay as part of the officers and employees salary seven dollars and fifty cents (\$7.50) per month for each officer and employee.

History: En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969.

premium not to exceed \$7.50 per month and made payment of that amount mandatory; and deleted a proviso dealing with budget aspects of premiums.

Amendments

The 1968 amendment made the group insurance program mandatory, deleted provision for payment of one-half of total

Repealing Clause

Section 2 of Ch. 220, Laws 1969 read "Section 2 of chapter 200, Laws of Montana, 1967, is repealed."

CHAPTER 11—ORDINANCES—INITIATIVE AND REFERENDUM

Section

11-1102. Ordinances—how prepared.

11-1102. (5056) Ordinances—how prepared. (1). * * * [Same as parent volume.]

(2) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference. At least fifteen (15) days prior to final action by a governing body of the city or town, notice of intent to adopt a technical code in whole or in part by reference shall be published in a newspaper of general circulation in the city or town and three (3) copies of the code, or part to be adopted, shall be filed with the clerk of the city or town for inspection by the public.

(3) and (4). * * * [Same as parent volume.]

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R. C. M. 1921; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969.

Amendments

The 1969 amendment inserted "fire," before "and plumbing codes" in subsection (2).

CHAPTER 12—CONTRACTS AND FRANCHISES

Section

11-1202. Awarding contracts—advertisements—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions.

11-1202. (5070) Awarding contracts—advertisements—limitations—installments—sales of supplies—construction of buildings—purchases from government agencies—exemptions. All contracts for the purchase of any automobile, truck, or other vehicle or road machinery, or for any other machinery, apparatus, appliances, or equipment, or for any materials or supplies of any kind, or for the construction of any building, for which must be paid a sum exceeding two thousand five hundred dollars (\$2,500.00), must be let to the lowest responsible bidder after advertisement for bids; provided that no contract shall be let extending over a period of five (5) years or more without first submitting the question to a vote of the taxpaying electors of said city or town. Such advertisement shall be made in the official newspaper of the city or town, if there be such official

newspaper, and if not it shall be made in a daily newspaper of general circulation published in the city or town, if there be such, otherwise by posting in three (3) of the most public places in the city or town. Such advertisement if by publication in a newspaper shall be made once each week for two consecutive weeks and the second publication shall be made not less than five (5) days nor more than twelve (12) days before the consideration of bids. If such advertisement is made by posting, fifteen (15) days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids. The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement, may reject any and all bids and readvertise as herein provided. The provisions of this section as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot or insurrection, or any other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths ($\frac{3}{4}$) of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

When the amount to be paid under any such contract shall exceed two thousand five hundred dollars (\$2,500.00) the council may provide for the payment of such an amount in installments extending over a period of not more than five (5) years; provided that when such amount is extended over a term of two (2) years at least forty per centum (40%) thereof shall be paid the first year and the remainder the second year, and when such amount is extended over a term of three (3) years, at least one-third ($\frac{1}{3}$) thereof shall be paid each year, and if such amount is extended over a term of four (4) years, at least one-fourth ($\frac{1}{4}$) is to be paid each year, and if such amount is extended over a term of five (5) years, at least one-fifth ($\frac{1}{5}$) is to be paid each year; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then current fiscal year, and the budget for each following year, in which any portion of such purchase price is to be paid, shall contain an appropriation for the purpose of paying the same.

Old supplies or equipment may be sold by the city or town to the highest responsible bidder, after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

Also a city or town may, without bid, when there are sufficient funds in the budget for supplies or equipment, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

All necessary contracts for professional, technical, engineering and legal services are excluded from the provisions of this act.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R. C. M. 1921; amd. Sec. 1, Ch. 22, L. 1927; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969.

Amendments

The 1969 amendment, in the first paragraph, substituted "for the purchase of any automobile * * * a sum exceeding two thousand five hundred dollars (\$2,500)" for

"for work, or for supplies, or for material, or for the construction of any building, for which must be paid a sum exceeding one thousand dollars (\$1,000.00)" and raised the maximum duration of a contract to be let without a vote from three to five years; in the second paragraph, substituted "two thousand five hundred dollars (\$2,500.00)" for "one thousand dollars (\$1,000.00)," inserted "an" before "amount," raised the maximum term of installments from three to five years, and inserted "and if such amount is extended * * * term of five (5) years * * * paid each year;"

CHAPTER 13—PRESENTATION AND PAYMENT OF CLAIMS— CITY WARRANTS

Section

11-1310. Investment of city or town moneys in city or town warrants and approved securities.

11-1310. Investment of city or town moneys in city or town warrants and approved securities. (1) Except as provided in subsection (2) of this section, whenever the city or town has under its control any moneys, for which there is no immediate demand, in any fund which, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council is authorized in their discretion to direct the city or town treasurer to purchase legally issued city or town general obligation warrants of the same city or town, thereafter issued against funds in which there is not sufficient funds to pay such city or town warrants at the time of issuance, and in case of such purchase, the city or town council shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the city or town warrant or warrants which are to be purchased by such funds. The city or town clerk shall thereupon cause to be attached to, or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase such warrant. The city or town treasurer shall thereafter, when such city or town warrant is presented to him, purchase the same out of the proper fund as designated by the city or town council, and the warrant so purchased shall be registered as other city or town warrants, and bear interest as provided by law. When the designated amounts have been invested the city or town treasurer shall notify the city or town clerk.

(2) Whenever the city or town has under its control any moneys realized from the sale of bonds, for which there is no immediate demand, which in the judgment of the city or town council it would be advantageous to invest in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less, the city or town council is authorized in their discretion to direct the city or town treasurer to make

such investments. Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the bond sinking fund of the city or town.

History: En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963; amd. Sec. 2, Ch. 268, L. 1969.

Amendments

The 1969 amendment substituted "funds"

for "money" before "to pay such city or town warrants" in the first sentence of subsection (1); and inserted "including interest * * * time of purchase" in the last sentence of subsection (2).

CHAPTER 16—JUDICIAL POWERS—POLICE COURTS

11-1603. (5089) Jurisdiction for violation of ordinances, etc.

Penalty Assessment on Fines

Statute providing for penalty assessments in addition to fines was void for indirectly enlarging jurisdiction of justice

and police courts in terms of maximum fine which might be imposed. State ex rel. Sanders v. City of Butte, 151 M 171, 441 P 2d 190.

CHAPTER 18—POLICE DEPARTMENT, METROPOLITAN POLICE LAW

Section

11-1815. Salary of chief of police.

11-1832. Minimum wage of police in first and second class cities.

11-1815. (5107) Salary of chief of police. That from and after July 1, 1969, the salary of the chief of police in cities of the first class shall not be less than six hundred fifty dollars (\$650) per month for the first year of service, and thereafter of at least six hundred fifty dollars (\$650) per month, plus one per cent (1%) of said minimum base monthly salary for each additional year of service up to and including the twentieth year of such additional service. Subject to such minimum the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council.

History: En. Sec. 13, Ch. 136, L. 1907; Sec. 3316, Rev. C. 1907; re-en. Sec. 5107, R. C. M. 1921; amd. Sec. 1, Ch. 9, L. 1951; amd. Sec. 1, Ch. 29, L. 1957; amd. Sec. 1, Ch. 356, L. 1969.

Amendments

The 1969 amendment substituted "1969" for "1957" and raised the minimum salary from \$450 to \$650 per month.

11-1832. (5108.16) Minimum wage of police in first and second class cities. That from and after July 1, 1969, there shall be paid to each duly confirmed member of the police department of cities of the first class of the state of Montana, a minimum wage for a daily service of eight (8) hours' work, of at least five hundred twenty-five dollars (\$525) minimum per month for the first year of service, and thereafter of at least five hundred twenty-five dollars (\$525) minimum per month plus one per cent (1%) of said minimum base monthly salary of five hundred twenty-five dollars (\$525) for each additional year service up to and including the twentieth year of such additional service. From and after July 1, 1969, there shall be paid to each duly confirmed member of the police department of cities of the second class of the state of Montana, a minimum wage for a daily service of eight (8) hours' work, of at least four hundred

seventy-five dollars (\$475) minimum per month for the first year of service, and thereafter of at least four hundred seventy-five dollars (\$475) minimum per month plus one per cent (1%) of said minimum base monthly salary of four hundred seventy-five dollars (\$475) for each additional year service up to and including the twentieth year of such additional service.

History: En. Sec. 1, Ch. 55, L. 1935; amd. Sec. 2, Ch. 96, L. 1939; amd. Sec. 1, Ch. 294, L. 1947; amd. Sec. 1, Ch. 47, L. 1951; amd. Sec. 1, Ch. 28, L. 1957; amd. Sec. 1, Ch. 266, L. 1967; amd. Sec. 1, Ch. 298, L. 1969.

for "1967," deleted "and second" between "cities of the first" and "class," raised the minimum monthly wage base in cities of the first class from \$400 to \$525; and added the second sentence, raising the minimum monthly wage base in cities of the second class from \$400 to \$475.

Amendments

The 1969 amendment substituted "1969"

CHAPTER 19—FIRE DEPARTMENT—FIREMEN'S DISABILITY AND PENSION FUND

Section

11-1905. Qualifications of firemen.

11-1919. State auditor to pay fire department relief association out of license fees collected from insurance companies.

11-1932. Minimum wages of firemen in cities of first and second class.

11-1905. (5113) Qualifications of firemen. The qualifications of firemen shall be that they shall not, at the time of original appointment, be over thirty-one (31) years of age, and shall have passed a physical examination by a practicing physician duly authorized to practice in this state, which examination shall be in writing and filed with the city or town clerk, and at the option of said city or town shall be qualified voters of the city or town. Such examination shall disclose the ability of such applicant to perform the physical work usually required of firemen in the performance of their duty.

History: En. Sec. 5, p. 74, L. 1899; re-en. Sec. 3330, Rev. C. 1907; re-en. Sec. 5113, R. C. M. 1921; amd. Sec. 1, Ch. 29, L. 1955; amd. Sec. 1, Ch. 217, L. 1969.

* * * city or town" at the end of the first sentence and made a minor change in phraseology.

Amendments

The 1969 amendment deleted "be qualified voters of the city or town," after "they shall," added "and at the option

Effective Date

Section 2 of Ch. 217, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

11-1919. (5127) State auditor to pay fire department relief association out of license fees collected from insurance companies. At the end of the fiscal year, the state auditor shall issue and deliver to the treasurer of every city or town of the first and second class, for the use and benefit of the fire department relief association legally existing in every such city or town entitled by law to receive the same, out of the license fees on insurance risks collected by him, an amount equal to ten per centum (10%) of the total annual compensation paid by such city or town to its paid or part-paid firemen for services in the previous calendar year. The city clerk of each such city or town shall certify in writing to the state auditor, on or before March 1 of each year, the amount so paid by such city or town as compensation for services to paid or part-paid firemen.

In the event a city of the second class is not entitled to receive a sum equal to twenty-five one hundredths (25/100) mills of its total assessed valuation under the foregoing method of computation then, in that event, the fire department relief association of that city shall receive its money in the same manner as provided below for cities of the third class.

1. and 2. * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 129, L. 1911; amd. Sec. 1, Ch. 49, L. 1915; re-en. Sec. 5127, R. C. M. 1921; amd. Sec. 9, Ch. 58, L. 1927; amd. Sec. 1, Ch. 127, L. 1933; amd. Sec. 1, Ch. 15, L. 1935; amd. Sec. 1, Ch. 127, L. 1947; amd. Sec. 1, Ch. 183, L. 1959; amd. Sec. 1, Ch. 54, L. 1963; amd.

Sec. 4, Ch. 208, L. 1967; amd. Sec. 1, Ch. 203, L. 1969.

Amendments

The 1969 amendment inserted the second paragraph.

11-1932. Minimum wages of firemen in cities of first and second class. From and after July 1, 1969, there shall be paid to each duly appointed and confirmed member of the fire department of cities or towns of the first class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work of at least five hundred twenty-five dollars (\$525) per month for the first year of service, and thereafter of at least five hundred twenty-five dollars (\$525) minimum per month plus one per cent (1%) of said minimum base monthly salary five hundred twenty-five dollars (\$525) for each additional year of service up to and including the twentieth year of such additional service. From and after July 1, 1969, there shall be paid to each duly appointed and confirmed member of the fire department of cities of the second class of the state of Montana, a minimum wage for a daily service of eight (8) consecutive hours work, of at least four hundred seventy-five dollars (\$475) per month for the first year of service, and thereafter of at least four hundred seventy-five dollars (\$475) minimum per month plus one per cent (1%) of said minimum base monthly salary of four hundred seventy-five dollars (\$475) for each additional year of service up to and including the twentieth year of such additional service.

History: En. Sec. 1, Ch. 293, L. 1947; amd. Sec. 1, Ch. 51, L. 1951; amd. Sec. 1, Ch. 62, L. 1957; amd. Sec. 1, Ch. 267, L. 1967; amd. Sec. 1, Ch. 342, L. 1969.

Amendments

The 1969 amendment substituted "1969" for "1967," deleted "or second" between

"cities or towns of the first" and "class," raised the minimum wage of firemen in first class cities from \$400 per month to \$525; and added the second sentence, raising the minimum wage of firemen in second class cities from \$400 per month to \$475.

CHAPTER 20—FIRE PROTECTION IN UNINCORPORATED TOWNS— FIRE WARDENS, COMPANIES AND DISTRICTS

Section

- 11-2008. Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries.
- 11-2010. Trustees of fire districts—mutual aid agreements.
- 11-2023. Qualification for compensation.

11-2008. (5148) Fire protection—creation of fire districts—contracts with cities, towns and private service—dissolution and change of boundaries. (a) The board of county commissioners is authorized to establish

fire districts in any unincorporated territory, town or village upon presentation of a petition in writing signed by the owners of fifty per cent (50%) or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area, and whose names appear upon the last completed assessment roll; the board shall within ten (10) days after the receipt of such petition; give notice of the hearing thereof at least ten (10) days prior thereto by mailing a copy of the notice by first class mail to each freeholder in the district at the address above shown in the assessment roll, by causing notices of the time and place of such hearing to be posted in at least three (3) of the most public places within the area proposed to be established as a fire district, and published at least once not less than ten (10) or more than twenty (20) days prior to the time of said hearing in a newspaper regularly published in the county in which such proposed district is situated. The board shall proceed to hear the said petition at the time set therefor, or at any time within five (5) days thereafter to which the same shall have been postponed or continued with due notice, and may grant the same unless it shall be established thereat that the petition bears insufficient signatures as above required, or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient. The board shall render its decision within thirty (30) days after said hearing. At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts, or for the purpose of paying to a city, town or private fire service the consideration provided for in any contract with the council of such city, town or private fire service for the purpose of furnishing fire protection service to property within such district, and such tax must be collected as are other taxes. That the relationship between fire district and the city, town or private fire service shall be that of an independent contractor.

(b) * * * [Same as parent volume.]

(c) Change of boundaries—division. Fire districts may be divided in the following manner: Whenever a petition in writing shall be made to the county commissioners, signed by the owners of twenty per cent (20%), or more, of the privately owned lands of an area proposed to be detracted from the original district, and who constitute twenty per cent (20%), or more, of the taxpayers who are freeholders within such proposed detracted area, whose names appear upon the last completed assessment roll, the county commissioners shall, within ten (10) days from the receipt of such petition give notice of the hearing of said petition by mailing a copy of the notice by first class mail to each freeholder in the district at the address shown in the assessment roll, by causing to be posted, a notice thereof at least ten (10) days prior to the time appointed by them for the consideration of said petition, in at least three (3) of the most public places within the proposed detracted area, and also in at least three (3) of the most public places within the remaining area. The petition for detraction shall describe the boundaries of the proposed detracted area, and also the boundaries of the remaining area. The county commissioners

shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear said petition; and said petition shall be granted, and the original districts shall thereupon be divided into separate districts, unless at the time of the hearing on such petition protests shall be presented by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within the entire original district, and who constitute a majority of the taxpayers who are freeholders of the entire original district, and whose names appear upon the last completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed. Upon the division of districts, moneys on hand shall be apportioned between the divided areas according to their respective taxable valuations; all other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such "other assets" and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations. Provided, however, that any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

(d). * * * [Same as parent volume.]

Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner: A petition in writing by the owners of fifty per cent (50%), or more, of the privately owned lands of an area which is part of any organized fire district, and who constitute a majority of the taxpaying freeholders within such area, according to the last completed assessment roll, shall be presented to the county commissioners asking that such area be transferred to, and included in, any other organized fire district to which said area is adjacent. Said petition must set forth the change of boundaries to be affected by such proposed transfer of area. The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in subsection (c), above; and the withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of fifty per cent (50%), or more, of the area of the privately owned lands included within either district affected, and who constitute a majority of the taxpaying freeholders of either district, according to the last completed assessment roll, and provided, that such withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the fire-fighting facilities of the other district.

History: En. Sec. 3237, Pol. C. 1895; re-en. Sec. 2081, Rev. C. 1907; amd. Sec. 1, Ch. 16, L. 1915; amd. Sec. 1, Ch. 16, L. 1921; re-en. Sec. 5148, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1931; amd. Sec. 1, Ch. 118, L. 1945; amd. Sec. 2, Ch. 97, L. 1947; amd. Sec. 1, Ch. 75, L. 1953; amd. Sec. 1, Ch. 75, L. 1957; amd. Sec. 1, Ch. 48, L. 1959; amd. Sec. 1, Ch. 77, L. 1959; amd. Sec. 1, Ch. 49, L. 1963; amd. Sec. 1, Ch. 45, L. 1969.

Amendments

The 1969 amendment inserted a requirement for notice "by mailing a copy of the notice by first class mail to each freeholder in the district at the address shown in the assessment roll" in subsections (a) and (c).

Effective Date

Section 2 of Ch. 45, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

11-2010. (5149) **Trustees of fire districts—mutual aid agreements.** (a) and (b). * * * [Same as parent volume.]

(c) The trustees of such fire district may contract with the council of any city or town, or with the trustees of any other fire district established in any unincorporated territory, town or village, lying within five (5) miles of the farthest limits of the district, whether such city or town or other fire district shall lie within the same county or another county, for the extension of fire protection service by such city or town, or by such other fire district, to property included within the district, and may agree to pay a reasonable consideration therefor, provided, that the owners of ten per cent (10%) of the taxable value of the property in any fire district may elect to make a contract with the city fire department for fire protection, or to be included in the fire district protection facilities. Likewise, the trustees may contract to permit the fire district equipment and facilities to be used by or for such cities or towns lying within the district, or by such cities, towns, or other fire districts lying within five (5) miles of the farthest limits of the district. Likewise, the trustees may enter into contracts with public or private parties under which the district fire company may extend fire protection to public or private property lying more than one (1) mile outside of the district or any other district or city limits, but within five (5) miles of the farthest limits of the district, whether such public or private property shall lie within the same county or another county; and the district fire company may use the fire district equipment and facilities outside of the district in the performance of such contracts. All moneys received from such contracts shall be deposited in the county treasurer's office and credited to the fire district fund holding such contracts.

(d). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1925; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969.

Amendments

The 1969 amendment added the last two sentences to subsection (c).

Repealing Clause

Section 2 of Ch. 333, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 333, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 13, 1969.

11-2023. (5158.4) **Qualification for compensation.** (1) In order to qualify for the compensation provided under subparagraphs one (1), two (2), three (3) and four (4) of section 11-2022, the fireman must be an enrolled active member of a fire company organized under the laws of the state of Montana in an unincorporated area, town or village, at the time of such injury or sickness for which compensation hereunder is claimed.

(2) In order to qualify for participation in the volunteer firemen's pension plan under subparagraph five (5) of section 11-2022, a volunteer fireman must meet each of the following requirements:

(A) He must have completed a total of twenty (20) years' service as an active volunteer fireman and as an active member of a qualified volunteer fire company organized under the laws of the state of Montana in

an unincorporated area, town or village; provided, that from and after July 1, 1965, no volunteer fireman shall receive credit for any year of membership in any such volunteer fire company unless throughout such year such volunteer fire company shall have maintained fire-fighting equipment in serviceable condition of a value of two thousand five hundred dollars (\$2,500) or more, and unless throughout such year such volunteer fire company, or the fire district served thereby, shall have been rated in class five (5), six (6), seven (7), eight (8), nine (9) or ten (10) by the board of fire underwriters for the purpose of fire insurance premium rates; provided, further, that such twenty (20) years of active service shall be cumulative and need not be continuous, and that such service need not be acquired with one (1) single fire company, but may be a total of separate periods of active service with different fire companies organized under the laws of the state of Montana in different fire districts in unincorporated areas, towns or villages. From and after passage of this act, the annual period of service for the purpose of this act shall be the fiscal year; no fractional part of any year shall count toward the twenty-year service requirement, and to receive credit for any particular year a volunteer fireman must serve with one (1) particular volunteer fire company throughout that entire fiscal year;

(B) and (C). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 65, L. 1935; amd. Sec. 2, Ch. 118, L. 1965; amd. Sec. 1, Ch. 161, L. 1967; amd. Sec. 1, Ch. 46, L. 1969.

before "town or village" in subsection (1); and substituted "two thousand five hundred dollars (\$2,500)" for "seven hundred fifty dollars (\$750)" and added class "ten (10)" in subdivision (2) (A).

Amendments

The 1969 amendment inserted "area"

CHAPTER 22—SPECIAL IMPROVEMENT DISTRICTS

Section

11-2206. Protests against proposed work.

11-2206. (5229) Protests against proposed work. (1). * * * [Same as parent volume.]

(2) At the next regular meeting of the city or town council or commission after the expiration of the time within which said protest may be so made, the city or town council or commission shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, that, except as hereinafter provided, when the protest is against the proposed work, and the cost thereof is to be assessed against property fronting thereon, and the city or town council or commission finds that such protest is made by the owners of more than fifty per cent of the property fronting on the proposed work, or when the protest is against the proposed work, and the cost thereof is to be assessed upon the property within an extended district, and the city or town council or commission finds that such protest is made by the owners of more than fifty per cent of the area of the property to be assessed for said improvements, no further proceedings shall be taken for a period of six months from the date when said sufficient protest shall have been received

by said clerk of the city or town council or commission; provided, however, that when the improvement proposed is the paving, with necessary incidentals, of not more than one (1) cross block, to connect with streets or avenues already paved for a continuous distance of three (3) blocks or more running [at] a right angle, or substantially so, with the single cross block so proposed to be paved, in such case the city or town council or commission shall have the right to overrule any and all objections and pave the proposed block with gravel and oil surface; and provided, too, that in case the improvement is the construction of a sanitary sewer such protest may be overruled by an affirmative vote of a majority of the members of the city or town council or commission; unless such protest is made by the owners of more than seventy-five per cent of the property affected as herein provided, in which event the protest must be sustained as to the construction of such sanitary sewer.

(3). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 89, L. 1913; amd. Sec. 3, Ch. 142, L. 1915; re-en. Sec. 5229, R. C. M. 1921; amd. Sec. 2, Ch. 135, L. 1923; amd. Sec. 1, Ch. 36, L. 1939; amd. Sec. 1, Ch. 149, L. 1969.

Amendments

The 1969 amendment substituted "fifty

per cent" for "forty per cent" twice in the first proviso in subsection (2).

Effective Date

Section 2 of Ch. 149, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

CHAPTER 24—MUNICIPAL REVENUE BOND ACT OF 1939

Section

11-2402. Definitions.

11-2402. Definitions. Whenever used in this act, unless a different meaning clearly appears from the context:

(a). The term "undertaking" shall mean any one or a combination of the following: water, and sewerage systems, together with all parts thereof and appurtenances thereto including, but not limited to, supply and distribution systems, reservoirs, dams, sewage treatment, disposal works, public airport construction and public airport building, convention facilities, public recreation facilities and public parking facilities; or other revenue-producing facilities and services authorized in these codes for cities and towns.

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 126, L. 1939; amd. Sec. 1, Ch. 42, L. 1949; amd. Sec. 1, Ch. 111, L. 1959; amd. Sec. 1, Ch. 254, L. 1969.

Amendments

The 1969 amendment inserted ", convention facilities, * * * parking facilities" in the definition of "undertaking."

CHAPTER 27—BUILDING REGULATIONS—ZONING COMMISSION

Section

11-2705. Changes.

11-2705. (5305.5) Changes. Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified,

or repealed. In case, however, of a protest against such change, signed by the owners of twenty per centum (20%) or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred and fifty (150) feet therefrom, or of those adjacent on either side thereof within the same block, or of those directly opposite thereof extending one hundred and fifty (150) feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths ($\frac{3}{4}$) of all the members of the city or town council or legislative body of such municipality. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments.

History: En. Sec. 5, Ch. 136, L. 1929; those adjacent * * * same block" before
amd. Sec. 1, Ch. 161, L. 1969. "or of those directly opposite * * *" in
the second sentence.

Amendments

The 1969 amendment inserted "or of

CHAPTER 32—COMMISSION-MANAGER FORM OF GOVERNMENT

Section

11-3248. Compensation of commissioners and mayor.

11-3248. (5447) Compensation of commissioners and mayor. The salary of each commissioner may be as follows: For each formal meeting of record attended, cities or towns with less than twenty-five thousand inhabitants, twenty-five dollars (\$25); provided that no more than one (1) fee shall be paid for any one (1) day. For cities with more than twenty-five thousand inhabitants, the annual salary of each commissioner shall not exceed two thousand five hundred dollars (\$2,500). The salary of the commissioner acting as mayor may be one and one-half times that of the other commissioners.

History: En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. 5447, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1949; amd. Sec. 1, Ch. 71, L. 1965; amd. Sec. 1, Ch. 289, L. 1969.

Amendments

The 1969 amendment divided the former first sentence into two sentences; substituted

"each formal meeting of record" for "each meeting," "twenty-five dollars (\$25)" for "twenty dollars (\$20)" and made minor changes in the proviso; inserted "For" at the beginning of the second sentence and substituted "the annual salary * * * (\$2,500)" for "not to exceed forty dollars (\$40.00)."

CHAPTER 38—CITY OR CITY-COUNTY PLANNING BOARDS

Section

11-3830. Jurisdictional area.

11-3830. Jurisdictional area. 1. The governing bodies represented on a city-county planning board shall by separate resolution establish the jurisdictional area of the planning board. The jurisdictional area shall include the area within the incorporated limits of the city and such contiguous unincorporated area outside the city as, in the judgment of the respective governing bodies, bears reasonable relation to the development of the area involved.

The boundaries of the jurisdictional area can be extended further than four and one-half miles from the limits of the cities only upon petition signed by five per cent (5%) or more of the resident freeholders living in excess of four and one-half miles and not more than twelve miles from the limits of the cities and within the area desiring to be included within said jurisdictional limits, and upon presentation of said petition to the board of county commissioners. Thereafter, the board of county commissioners must, by resolution, set the proposed boundaries of said area and give notice of their intent to add said area to the jurisdictional limits theretofore created and of receipt of said petition, by publication of notice of time and place of hearing on said petition and resolution, said notice to be published in a newspaper published in the county not less than ten (10) nor more than twenty (20) days prior to the date of said hearing. Thereafter, the said boundaries of said area can only be set upon good cause being shown for the establishment of said extended jurisdictional area and the boundaries thereof, provided that such resolution shall not be adopted by the board of county commissioners, if disapproved in writing, by a majority of the freeholders of the territory proposed to be embraced. The jurisdictional area shall not extend more than twelve (12) miles beyond the limits of any city within the jurisdictional area.

2 and 3. * * * [Same as parent volume.]

History: En. Sec. 30, Ch. 246, L. 1957; amd. Sec. 3, Ch. 271, L. 1959; amd. Sec. 11, Ch. 247, L. 1963; amd. Sec. 1, Ch. 136, L. 1969.

involved" for "city" at the end of the first sentence; inserted the first three sentences of the second paragraph, and in the fourth sentence, formerly the second sentence of the first paragraph, substituted "twelve miles" for "four and one-half (4½) miles."

Amendments

The 1969 amendment substituted "area

CHAPTER 39—URBAN RENEWAL LAW

Section

11-3901. Definitions.

11-3906. Preparation and approval of urban renewal projects and urban renewal plans.

11-3907. Powers.

11-3901. Definitions. The following terms wherever used or referred to in this act, shall have the following meanings, unless a different meaning [is] clearly indicated by the context:

(a) to (p). * * * [Same as parent volume.]

(q) "Urban renewal plan" means a plan, as it exists from time to time for one or more urban renewal areas or for an urban renewal project, which plan (1) shall conform to the comprehensive plan or parts thereof for the municipality as a whole; and (2) shall be sufficiently complete to indicate, on a yearly basis or otherwise, such land acquisition, demolition, and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public

utilities, recreational and community facilities, and other public improvements.

(r). * * * [Same as parent volume.]

(s) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality shall elect to undertake activities on an annual increment basis. In the event of such election the municipality shall present its proposed annual increment activities or undertakings for public approval in keeping with section 11-3906 of this act. Such activity year shall relate to the budget year of the municipality.

History: En. Sec. 1, Ch. 195, L. 1959;
amd. Sec. 1, Ch. 210, L. 1969.

Amendments

The 1969 amendment, in subdivision (q), inserted "for one or more urban renewal areas or" after "from time to time" and in item (2), "on a yearly basis or otherwise" after "sufficiently complete to indicate"; and added subdivision (s).

Compiler's Notes

The compiler has inserted the bracketed word "is" in the introductory paragraph.

11-3906. Preparation and approval of urban renewal projects and urban renewal plans. (a) A municipality shall not approve an urban renewal project for an urban renewal area unless the local governing body has, by resolution, determined such area to be a blighted area and designated such area as appropriate for an urban renewal project. The local governing body shall not approve an urban renewal plan until a comprehensive plan or parts of such plan for an area which would include an urban renewal area for the municipality have been prepared. For this purpose, and other municipal purposes, authority is hereby vested in every municipality to prepare, to adopt, and to revise from time to time, a comprehensive plan or parts thereof for the physical development of the municipality as a whole (giving due regard to the environs and metropolitan surroundings), to establish and maintain a planning commission for such purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor. A municipality shall not acquire real property for an urban renewal project unless the local governing body has approved the urban renewal project plan in accordance with subsection (d) hereof.

(b) to (f). * * * [Same as parent volume.]

(g) If the plan or any subsequent modification thereof involves financing by the issuance of general obligation bonds of the municipality as authorized in section 11-3913, subsection (c), or the financing of water or sewer improvements by the issuance of revenue bonds under the provisions of Title 11, chapter 24, or of sections 11-2217 to 11-2221, inclusive, the question of approving the plan and issuing such bonds shall be submitted to a vote of the taxpayers of such municipality in accordance with the provisions of sections 11-2303 to 11-2310, inclusive, at the same election and shall be approved by a majority of those taxpayers voting on such question. Aiding in the planning, undertaking or carrying out of an urban renewal project approved in accordance with this section shall be deemed a single purpose for the issuance of general obligation bonds, and the proceeds of such bonds authorized for any such project may be used to finance the exercise of any and all powers conferred upon the municipality

by section 11-3907 which are necessary or proper to complete such project in accordance with the approved plan and any modification thereof duly adopted by the local governing body. Sections 11-2306 and 11-2307 shall not be applicable to the issuance of such bonds.

(h) The municipality may elect to undertake and carry out urban renewal activities on a yearly basis. In such event, the activities shall be included in the yearly budget of the municipality. Such activities need not be limited to contiguous areas; however, such activities shall be confined to the areas as outlined in the urban renewal plan as approved by the municipality in accordance with this act. The yearly activities shall constitute a part of the urban renewal plan and the municipality may elect to undertake certain yearly activities and total urban renewal projects simultaneously. The undertaking of urban renewal activities on a yearly basis shall be designated as a "neighborhood development program" and the financing of such activities shall be approved in accordance with section 11-3906, subsection (g).

History: En. Sec. 6, Ch. 195, L. 1959; amd. Sec. 2, Ch. 38, L. 1965; amd. Sec. 2, Ch. 210, L. 1969.

Amendments

The 1969 amendment made a minor change in punctuation in subsection (a); deleted the former first sentence of sub-

section (g) which read: "Upon the approval of an urban renewal project by a municipality the plan shall be submitted to a vote of the taxpayers of such municipality and shall be approved by a majority of those taxpayers voting on such question"; and added subsection (h).

11-3907. Powers. Every municipality shall have all the power necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) to (i). * * * [Same as parent volume.]

(j) To plan and undertake neighborhood development projects consisting of urban renewal project undertakings and activities in one or more urban renewal areas which are planned and carried out on the basis of annual increments in accordance with the provisions of this act for carrying out and planning urban renewal projects.

(k) To exercise all or any part or combination of powers herein granted.

(l) Nothing in this act shall be construed to authorize any municipality to construct or operate, as a part of any urban renewal project, any electric generation plant, electric transmission or distribution lines or other public utility facilities excepting water and sewer lines then operated by municipalities.

History: En. Sec. 7, Ch. 195, L. 1959; amd. Sec. 3, Ch. 210, L. 1969.

sion (j) and designated former subdivisions (j) and (k) as new subdivisions (k) and (l).

Amendments

The 1969 amendment inserted subdivi-

CHAPTER 40—OPEN DITCHES

Section

- 11-4001. Purpose of act.
 11-4002. Open ditch declared nuisance.
 11-4003. Powers of governing body.
 11-4006. Commercial irrigation ditches exempt.

11-4001. Purpose of act. The legislative assembly declares that the control of ditch water in inhabited areas of Montana is affected with the public interest. The purpose of this act is to prevent drowning of children in ditches filled or partially filled with water within the limits of an incorporated city or town. This act shall be deemed an exercise of the police power of the state in and for the protection of the welfare, health, peace and safety of the people of Montana.

Nothing in this act shall be construed as intending to effectuate the abandonment of any valid water right. This act shall be construed merely as a regulation in the public interest so that the diversion, transportation and use of water in such ditches in cities and towns shall be in a safe manner, as defined by this act.

History: En. Sec. 1, Ch. 63, L. 1961; ditches terminate within the limits of
 amd. Sec. 1, Ch. 306, L. 1969. such city or town" at the end of the
 second sentence of the first paragraph.

Amendments

The 1969 amendment deleted "if such

11-4002. Open ditch declared nuisance. Notwithstanding any provision contained in Title 89, Revised Codes of Montana, 1947, or any law pertaining to the use of water in Montana, it is hereby declared that water which flows through the limits of an incorporated city or town in an open ditch is a public nuisance, if such city or town declares it to be such nuisance, acting through its governing body.

History: En. Sec. 2, Ch. 63, L. 1961; ditch" for "unfenced, open ditch that
 amd. Sec. 2, Ch. 306, L. 1969. terminates within the limits of such city
 or town."

Amendments

The 1969 amendment substituted "open

11-4003. Powers of governing body. The governing body of the city or town is hereby given the power:

(1) To investigate the dangerous condition of such ditches within the corporate limits and to declare any such ditch a public nuisance, and

(2). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 63, L. 1961; **Amendments**
 amd. Sec. 3, Ch. 306, L. 1969.

The 1969 amendment deleted "terminating" before "within the corporate limits" in subdivision (1).

11-4006. Commercial irrigation ditches exempt. This act does not apply to ditches carrying water used for commercial irrigation purposes. However, whenever the public interest or convenience may require, a city or town is hereby authorized and empowered to create a special improvement district for the purpose of building, constructing, acquiring by purchase, and maintaining, devices intended to protect the safety of the public

from open ditches carrying water. Such devices or improvements shall provide access to, and shall not be constructed so as to hinder the operation and maintenance of the ditch. The owner or owners of open ditches carrying irrigation or other water, shall not be included in any special improvement district under this act for the purpose of assessment to support the special improvement districts for the installation, repair, or maintenance of any protective devices.

History: En. Sec. 6, Ch. 63, L. 1961;
amd. Sec. 4, Ch. 306, L. 1969.

Amendments

The 1969 amendment added the second through the fourth sentences.

CHAPTER 41—INDUSTRIAL DEVELOPMENT PROJECTS

Section

11-4101. Definition of terms.

11-4101. Definition of terms. As used in this act, unless the context otherwise requires: (1) * * * [Same as parent volume.]

(2) Project shall mean any land, any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for manufacturing or industrial enterprises, recreation or tourist facilities, and hospitals, long-term care facilities or medical facilities;

(3) and (4). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 51, L. 1965;
amd. Sec. 1, Ch. 50, L. 1969.

Effective Date

Section 2 of Ch. 50, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

Amendments

The 1969 amendment added "recreation or tourist facilities, and hospitals, long-term care facilities or medical facilities" at the end of subdivision (2).

CHAPTER 44—INTERLOCAL CO-OPERATION COMMISSION—
IMPROVEMENT OF ESSENTIAL LOCAL GOVERNMENTAL SERVICES

Section

- 11-4401. Declaration of policy and purpose.
- 11-4402. Definitions.
- 11-4403. Establishment of an interlocal co-operation commission.
- 11-4404. Selection of an interlocal co-operation commission.
- 11-4405. Time of appointment.
- 11-4406. Meetings of commission.
- 11-4407. Vacancies—compensation—open meetings—quorum—rules.
- 11-4408. Considerations in preparation of proposals.
- 11-4409. Comprehensive program.
- 11-4410. Recommendations to implement program.
- 11-4411. Consideration of property and debts.
- 11-4412. Public hearings on proposed program.
- 11-4413. Procedure for making recommendations.
- 11-4414. Additional powers and duties.
- 11-4415. Appropriations.
- 11-4416. Term of commission.

11-4401. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of the state of Montana to provide for the residents

of the state the means of improving their local governments so that essential services can be provided more effectively and economically. The growth of urban population, the necessity to maintain local governmental services in areas of increasing population on one hand, and in areas of decreasing population on the other, and the movement of people into suburban areas have created varied problems in the provision of public services and facilities which often cannot be met adequately by individual units of local government.

(2) It is the purpose of this act to provide a method whereby the residents of local areas in Montana may propose local solutions to these common problems in order that proper growth and development of the state may be assured and the health and welfare of the people therein secured.

History: En. Sec. 1, Ch. 129, L. 1969.

interlocal co-operation commissions to consider and propose means of improving essential local governmental services in Montana.

Title of Act

An act providing for the creation of

11-4402. Definitions. As used in this act:

(1) "Commission" means an interlocal co-operation commission established pursuant to section 3 [11-4403] of this act.

(2) "Principal city" means the city having the largest population in the county under consideration according to the latest federal decennial census.

(3) "Unit of local government" means a county, city or town.

History: En. Sec. 2, Ch. 129, L. 1969.

11-4403. Establishment of an interlocal co-operation commission. An interlocal co-operation commission may be established in either of two ways:

(1) A joint resolution providing for the establishment of an interlocal co-operation commission may be adopted by a separate vote of a majority of the governing bodies of the county, cities and towns having any jurisdiction in the county under consideration. A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the clerk and recorder of the county and an interlocal co-operation commission shall be deemed to be authorized.

(2) A petition requesting the establishment of an interlocal co-operation commission shall be signed by at least ten (10) per cent of the qualified voters within the county registered for the last preceding general election and shall be filed with the clerk and recorder of the county.

Upon receipt of such a petition, the clerk and recorder shall examine the source and certify to the sufficiency of the signatures thereon. Within thirty (30) days following receipt of such petition, the clerk and recorder shall transmit the same to the board of county commissioners and to the governing body of all cities and towns having any jurisdiction in the county together with his certificate as to the sufficiency thereof and an interlocal co-operation commission shall be deemed to be authorized.

Only one (1) commission may be established in a county at any one time.

History: En. Sec. 3, Ch. 129, L. 1969.

11-4404. Selection of an interlocal co-operation commission. (1) Any interlocal co-operation commission established pursuant to this act shall consist of members to be selected as follows:

(a) Four (4) members selected by the county commissioners.

(b) Four (4) members appointed by the mayor of the principal city and confirmed by the governing body of the city.

(c) One (1) member appointed by the mayor of each of the other cities and towns in the county and confirmed by the governing body of the city or town.

(d) One (1) member, who shall be chairman of the interlocal co-operation commission, selected by the other members of the commission at their initial meeting.

(2) Each member shall reside at the time of his appointment within the county if selected by the board of county commissioners or within the city or town by which appointed.

(3) No member shall be an official or employee of any unit of local government.

History: En. Sec. 4, Ch. 129, L. 1969.

11-4405. Time of appointment. The members of the interlocal co-operation commission shall be appointed within sixty (60) days after the commission is authorized.

History: En. Sec. 5, Ch. 129, L. 1969.

11-4406. Meetings of commission. (1) Not later than eighty (80) days after the commission is authorized, the members of the commission shall meet and organize at a time which shall be set by the board of county commissioners.

(2) At the first meeting of the commission, one (1) of the members appointed by the board of county commissioners shall be designated by that body to serve as temporary chairman. As its first official act, the commission shall select a chairman from outside its own membership.

(3) Further meetings of the commission shall be held upon call of the chairman, the vice-chairman in the absence or inability of the chairman, or a majority of the members of the commission.

History: En. Sec. 6, Ch. 129, L. 1969.

11-4407. Vacancies—compensation — open meetings — quorum — rules.

(1) In case of a vacancy for any cause, a new member shall be appointed in the same manner as the member he replaces.

(2) Members of a commission shall receive no compensation but shall receive actual and necessary travel and other expenses incurred in the performance of official duties.

(3) All meetings of the commission shall be open to the public.

(4) A majority of the members of the commission shall constitute a quorum for the transaction of business.

(5) Each member shall have one (1) vote. A favorable vote by a majority of the entire commission shall be necessary for any action permitted by section 13 [11-4413] of this act, but other actions may be by a

majority of those present and voting. Each commission may adopt such other rules for its proceedings as it deems desirable.

History: En. Sec. 7, Ch. 129, L. 1969.

11-4408. Considerations in preparation of proposals. A commission shall consider the various areas included within the county, including areas incorporated as municipalities, unincorporated areas essentially urban in nature, unincorporated areas with both urban and rural characteristics and predominantly rural areas. In the formation of its proposals which can include arrangements for county-wide governmental services and urban area services in both incorporated and unincorporated areas, a commission shall study and take into consideration:

- (1) The existing land use within the county, including the location of highways and natural geographic barriers to and routes for transportation, making use, wherever possible, of comprehensive land-use plans prepared for the area by organized planning boards or other reliable surveys;

- (2) The need for organized local governmental services, the present cost and adequacy of local governmental services and controls in the area, probable future needs for such services and controls, and the probable effect of alternative courses of action on the cost and adequacy of services and controls in the areas concerned and in adjacent areas;

- (3) Population density, distribution and growth, per capita assessed valuation, the likelihood of significant growth in the areas concerned and in adjacent incorporated and unincorporated areas;

- (4) The boundaries of existing units of local government;

- (5) Maintenance of citizen access to, control of, and participation in local government;

- (6) Such other matters as might affect provision of local governmental services on an equitable basis and provide more efficient and economical administration thereof.

History: En. Sec. 8, Ch. 129, L. 1969.

11-4409. Comprehensive program. The commission shall prepare a comprehensive program for the furnishing of local governmental services, on both county-wide and urban areas bases, as it deems desirable.

History: En. Sec. 9, Ch. 129, L. 1969.

11-4410. Recommendations to implement program. In preparing its comprehensive program for furnishing local governmental services, a commission may recommend one or more of the following courses of action:

- (1) Performance of one or more services by any existing unit of local government;

- (2) Consolidation of specified services by transfer of functions between local units of government, by creation of joint administrative agencies or by contractual agreements;

- (3) Consolidation of any existing special service district with one or more other special service districts to perform all of the services provided by any of them;

(4) Creation of a new special service district to perform one or more services, with provision for the dissolution of any existing special service districts performing like service or services within the proposed boundaries of such new district;

(5) Annexation of unincorporated territory to any existing city or town;

(6) Consolidation of any existing cities and towns with any other existing cities and town;

(7) Consolidation of any cities and towns with the county in which they lie;

(8) Creation of a permanent council of governments, consisting of members of the governing bodies of the units of local government within and including the county concerned;

(9) Creation of a unified government for the entire county vested with (a) any and all powers which cities are, or may hereafter be, authorized or required to exercise under the constitution and general laws of the state of Montana, and (b) any and all powers which counties are, or may hereafter be, authorized or required to exercise under the constitution and general laws of the state of Montana.

(10) Any other change it considers desirable involving creation, dissolution, or consolidation of units of local government in the county under consideration, or involving alteration of their boundaries, powers, and responsibilities, consistent with provisions of the constitution of the state of Montana.

History: En. Sec. 10, Ch. 129, L. 1969.

11-4411. Consideration of property and debts. (1) The commission shall determine the value and amount of all property used in performing any local governmental service and all bonded and other indebtedness of units of local government attributable to the acquisition of such property and affected by its comprehensive program for both urban area services and county-wide services and shall determine and provide in its proposed program for assumption or equitable adjustment of such property and debts of each unit of local government affected.

History: En. Sec. 11, Ch. 129, L. 1969.

11-4412. Public hearings on proposed program. Within two (2) years after the date of its organization, the commission shall complete the preparation of its proposals for the provision of both urban area services and county-wide services and shall provide for adequate publication and explanation of its program. Notice of hearings shall be published once each week for at least two (2) weeks preceding a hearing, in at least one (1) newspaper of general circulation in the county. The notice shall state the time and place of the hearing.

History: En. Sec. 12, Ch. 129, L. 1969.

11-4413. Procedure for making recommendations. After public hearing, the commission shall submit proposals contained in its comprehensive program for action as follows:

(1) If the comprehensive plan of the commission includes the creation of, or any change, alteration, consolidation, dissolution or annexation with respect to any unit of local government or special district, a procedure for which is provided by law upon petition by the people and an election, the commission shall make public its proposal or proposals to the people in the area or areas affected.

(2) If the comprehensive plan includes any change, alteration, inter-local agreement, consolidation, dissolution, or annexation with respect to any unit of local government or special district which can be carried into effect under existing law by action of the governing bodies of the units affected, the commission shall recommend the necessary action to the governing body or bodies of the units of government concerned.

(3) If the comprehensive plan includes the creation of, or any change, alteration, consolidation, dissolution or annexation with respect to any unit of local government or special district which necessitates enabling legislation or amendments to the general laws or constitution of the state of Montana, the commission shall make such recommendation or recommendations to the ensuing legislative assembly.

History: En. Sec. 13, Ch. 129, L. 1969.

11-4414. Additional powers and duties. A commission shall have the following additional powers and duties:

(1) To contract and co-operate with other agencies, public or private as it considers necessary for the rendition and affording of such services, facilities, studies and reports to the commission as will best assist it to carry out the purposes for which the commission was established. Upon request of the chairman of the commission, all state agencies and all counties and other units of local government, and the officers and employees thereof, shall furnish the commission such information as may be necessary for carrying out its functions which may be available to or procurable by such agencies or units of government.

(2) To consult and retain such experts, and to employ such executive, clerical and other staff, as, in the commission's judgment, may be necessary.

(3) To accept and expend moneys from any public or private source, including the federal government. All moneys received by the commission shall be deposited with the county treasurer in the county. The county treasurer is authorized to disburse funds of the commission on its order.

(4) To do any and all other things as are consistent with and reasonably required to perform its functions under this act.

History: En. Sec. 14, Ch. 129, L. 1969.

11-4415. Appropriations. The units of local government within the county under consideration and the county may appropriate funds for the necessary expenses of the commission.

History: En. Sec. 15, Ch. 129, L. 1969.

11-4416. Term of commission. All commissions shall terminate four (4) years from the date of their establishment. However, a commission,

upon completion of its duties, may terminate earlier by a vote of three-fourths ($\frac{3}{4}$) of the members favorable to such earlier termination.

History: En. Sec. 16, Ch. 129, L. 1969.

Separability Clause

Section 17 of Ch. 129, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of

its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 18 of Ch. 129, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 26, 1969.

REVISED CODES OF MONTANA

VOLUME 2

Part 1

1969 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 2 (PART 1) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 2
(PART 1) THROUGH VOLUME 447, PACIFIC
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NEW LAWS IN VOLUME 2 (Part 1)

For index see pocket supplement to Replacement Volume 9

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12-201. (3) Laws, when retroactive.

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and begun construction of bypass prior to enactment and where enactment did not expressly declare legislative intent to apply statute retroactively. *City of Harlem v. State Highway Comm.*, 149 M 281, 425 P 2d 718.

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Section

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12-345. Adoption of Replacement Volume One, Part 2, and Replacement Volume Two, Parts 1 and 2. The Second Replacement of Part 2 of Volume Number 1 and Replacement Volume Number 2 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said Revised Codes of Montana, 1947, are hereby, as to both form and substance, approved, legalized and adopted as prima facie the laws of Montana now in force and effect with respect to the title and subjects covered thereby. The sections of said replacement volumes may be cited as sections of the Revised Codes of Montana, 1947, without reference to the session laws which enacted new matter or to the session laws which have amended the sections of the Revised Codes of Montana, 1947, as included in the original compilation of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 8, L. 1969.

Title of Act

An act to approve and legalize and adopt as prima facie the laws of Montana the Second Replacement of Part 2 of

Volume Number 1 and Replacement Volume Number 2 (in two parts) of the Revised Codes of Montana, 1947, as published by the publishers and distributors of said codes.

12-346. Omissions — inaccuracies — effect. Nothing herein contained shall be deemed as invalidating or in any manner affecting the legality of any act or thing heretofore or hereafter done by authority of any enactment which is not included in said replacement volumes and nothing

herein contained shall affect the existence, validity, or enforcement of any act, enactment, or title thereof, statute, or code section, omitted from or erroneously, or incorrectly set forth in said replacement volumes.

History: En. Sec. 2, Ch. 8, L. 1969.

the act should be in effect from and after its passage and approval. Approved January 29, 1969.

Effective Date

Section 3 of Ch. 8, Laws 1969 provided

CHAPTER 4—COMMISSION ON UNIFORM STATE LAWS

Section

12-404. Duties of commissioners.

12-404. Duties of commissioners. Each commissioner shall attend the meeting of the national conference of commissioners on uniform state laws, and both in and out of such national conference shall do all in his power to promote uniformity in state laws, upon all subjects where uniformity may be deemed desirable and practicable; said commission shall report as provided in section 2 [82-4002] of this act. It shall also be the duty of said commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws.

History: En. Sec. 4, Ch. 175, L. 1945; amd. Sec. 8, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the reference to the reporting requirements of

section 82-4002 for a former provision requiring a report on the commission's transactions and its advice and recommendations to be made to the legislature at each regular session.

TITLE 13—CONTRACTS

CHAPTER 2—PARTIES TO CONTRACT

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Employment Contract

Employee was not third-party beneficiary, within the meaning of statute, of contract between his employer and United States providing that employer should at all times be fully responsible for and exercise reasonable precaution for health and safety of his employees engaged in

performance of work under contract; hence employee was not entitled to maintain action for employer's breach of safety clauses in the absence of express promise in contract to pay damages in addition to employee's rights to workmen's compensation. *Hensley v. United States*, 279 F Supp 548.

CHAPTER 3—CONSENT

13-308. (7480) Actual fraud, acts constituting.

Material Misrepresentations

Broker's statement that laundromat grossed \$3,000 a month, was worth \$37,000, and "looks like a real good deal" did not establish material misrepresentations constituting fraud and entitling purchaser to rescind sale contract, in view of evidence that, although open less than thirty days a month, business did gross \$100 a day and that seller had paid \$30,000 for business and added \$4,000 of improvements; in the absence of corroboration, buyer's claim that broker also told him business netted \$1,000 a month was not basis for rescission. *Young v. Handrow*, 151 M 310, 443 P 2d 9.

One Party in Superior Position

Record disclosing that buyer of real estate who was real estate broker and mineral dealer, knowledgeable in legal affairs, titles and values of property and who handled drafting of contract, was in superior position as compared to seller who was almost illiterate, weak-minded and an irresponsible drinker, and who took no part in drafting contract, was sufficient to raise legal question of fraud on grounds of gross inadequacy of consideration and undue influence. *Rock v. Birdwell*, 149 M 449, 429 P 2d 634.

13-309. (7481) Constructive fraud.

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Constructive trust would not be imposed on lands deeded son by aged mother in absence of evidence to show that son gained land by accident, mistake, undue influence, violation of trust or other wrongful act or by constructive fraud as defined in statute. *Bodine v. Bodine*, 149 M 29, 422 P 2d 650.

Deficiency in Amount of Land Sold

Sale of land later shown to consist of fewer acres than represented constituted constructive fraud entitling buyer to rescission or damages under statute even though buyer, experienced in real estate transactions, failed to ascertain the true number of acres, and even though the seller's representations were honest mistake, not intended to deceive anyone. *Hardin v. Hill*, 149 M 68, 423 P 2d 309.

CHAPTER 6—CREATION OF CONTRACTS—ORAL AND WRITTEN

13-606. (7519) What contracts must be in writing.

Estoppel

Promisor was estopped from raising statute of frauds as defense to action by promisee under oral agreement to divide equally income received from soil bank

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CHAPTER 7—INTERPRETATION OF CONTRACTS

13-717. (7542) Contract—partly written and partly printed, etc.**Insurance Policy**

Stamped phrase "Double Indemnity" appearing on face of insurance policy must be interpreted in light of rider to

policy to which phrase refers. *Niewoehner v. Western Life Ins. Co.*, 149 M 57, 422 P 2d 644.

13-719. (7544) Inconsistent words rejected.**Contradictory Provisions**

In suit by contractor for additional expenses incurred in obtaining suitable gravel to perform road construction contract, contradiction whereby state highway commission on one hand warranted condition of gravel pit but on other hand disclaimed any liability from reliance on

such representations, would be resolved in favor of contractor for reason that contractor was in "take it or leave it" situation and justifiably relied upon commission's warranty. *Haggart Constr. Co. v. State Highway Commission*, 149 M 422, 427 P 2d 686.

13-720. (7545) Words to be taken most strongly against whom.**Option in Lease**

Agricultural tenant was not entitled to exercise option to buy contained in lease of land after expiration of lease, even though holding over, in light of statute

providing that uncertainties in contract be interpreted against plaintiff-promisor, causing uncertainty to exist. *Miller v. Meredith*, 149 M 125, 423 P 2d 595.

CHAPTER 8—UNLAWFUL CONTRACTS

13-806. (7558) Restraints upon legal proceedings.**Arbitration Provision**

On application for writ of supervisory control, district court would be required to take jurisdiction of claim by contractor for additional work performed on contract with drainage district, notwithstanding

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CHAPTER 9—EXTINCTION OF CONTRACTS—RESCISSION—
ALTERATION—CANCELLATION**13-905. (7567) Rescission—how effected.****Waiver of Right to Rescind**

In action by motorist, injured by negligence of insured, to recover under insured's policy, insurer impliedly waived right to rescind policy by accepting premium payments from insured and by

paying other claims arising out of the same accident, after insurer had discovered insured's fraudulent misrepresentations in application for policy. *McLane v. Farmers Ins. Exchange*, 150 M 116, 432 P 2d 98.

13-907. (7569) Written contracts—how modified.**Contingent Fee Contract**

A contingent fee contract providing that in event suit was instituted attorney would be entitled to 40 per cent of any

sums recovered is binding in absence of written contract or executed oral contract varying the original contract. *Gross v. Holzworth*, 151 M 179, 440 P 2d 765.

TITLE 14—CO-OPERATIVES

CHAPTER 5—RURAL ELECTRIC AND TELEPHONE CO-OPERATIVE ACT

14-502. Purpose.

Electric Service

In determining that electrical service was available from existing facilities of private company thereby denying co-operative right to supply electric service to potential customer, court relied upon evidence that private company was serving

other customers in area and evidence that distance private company would have to extend its service to supply new customer was less than distance co-operative would have to extend its service to supply same customer. *Montana Power Co. v. Fergus Elec. Co-op*, 149 M 258, 425 P 2d 329.

TITLE 15—CORPORATIONS

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- 22. Montana Business Corporation Act, 15-2202, 15-2226, 15-2236, 15-2272, 15-2285, 15-2290, 15-2295, 15-22-104, 15-22-109, 15-22-110, 15-22-121.
- 23. Montana Nonprofit Corporation Act, 15-2354, 15-2359, 15-2383.
- 26. Montana Development Credit Corporation Act, 15-2601 to 15-2618.

CHAPTER 22—MONTANA BUSINESS CORPORATION ACT

Section

- 15-2202. Definitions.
- 15-2226. Meetings of shareholders.
- 15-2236. Vacancies—removal of directors.
- 15-2272. Sale of assets other than in regular course of business.
- 15-2285. Articles of dissolution—tax clearance certificate.
- 15-2290. Jurisdiction of court to liquidate assets and business of corporation.
- 15-2295. Decree of involuntary dissolution.
- 15-22-104. Filing of application for certificate of authority.
- 15-22-109. Amendment to articles of incorporation of foreign corporation.
- 15-22-110. Merger of foreign corporation authorized to transact business in this state.
- 15-22-121. Fees for filing documents and issuing certificates.

15-2202. Definitions. As used in this act, unless the context otherwise requires, the term:

(a) to (o). * * * [Same as parent volume.]

(p) “Registered agent” means the person appointed as an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

History: En. Sec. 2, Ch. 300, L. 1967; **Amendments**
amd. Sec. 1, Ch. 152, L. 1969.

The 1969 amendment added subdivision (p).

15-2210. Renewal of registered name. A corporation which has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of ten dollars (\$10). A renewal application may be filed between October 1 and December 31 in each year, and shall extend the registration for the following calendar year.

Compiler's Notes

This section is reprinted to add a dollar sign (\$) omitted in the parent volume.

15-2226. Meetings of shareholders. Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the

designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-half ($\frac{1}{2}$) of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws.

History: En. Sec. 26, Ch. 300, L. 1967;
amd. Sec. 1, Ch. 308, L. 1969.

Amendments

The 1969 amendment substituted "one-half ($\frac{1}{2}$)" for "one-fourth ($\frac{1}{4}$)" in the third paragraph.

15-2236. Vacancies—removal of directors. Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. Any directorship to be filled by reason of the removal of one or more directors by the shareholders may be filled by election by the shareholders at the meeting at which the director or directors are removed.

At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. The entire board of directors may be removed, with or without cause, by a vote of the holders of two-thirds ($\frac{2}{3}$) of the shares then entitled to vote at an election of directors, unless otherwise provided by the articles of incorporation or bylaws; if the corporation has fewer than one hundred (100) shareholders, the entire board of directors will be removed by a vote of a majority of the shares then entitled to vote.

If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he is a part.

History: En. Sec. 36, Ch. 300, L. 1967;
amd. Sec. 1, Ch. 309, L. 1969.

Amendments

The 1969 amendment substituted "two-

thirds ($\frac{2}{3}$)" for "a majority" before "of the shares" and added "unless otherwise provided * * * entitled to vote" to the second sentence of the second paragraph.

15-2272. Sale of assets other than in regular course of business. A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

(a) to (d). * * * [Same as parent volume.]

(e) The shareholders of a corporation may, by a vote of the holders

of the number of shares required to change the articles of incorporation of such corporation at a meeting duly called upon not less than thirty (30) days' notice, amend the articles of incorporation to give the board of directors general authority to sell, lease, exchange or otherwise dispose of all, or substantially all, of the property and assets, with or without the good will, of a corporation, upon such conditions, and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by the board of directors.

History: En. Sec. 72, Ch. 300, L. 1967; **Amendments**
amd. Sec. 1, Ch. 125, L. 1969.

The 1969 amendment added subdivision (e).

15-2285. Articles of dissolution—tax clearance certificate. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

(a) to (e). * * * [Same as parent volume.]

No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree, or file any other document by which the term of existence of any corporation is terminated except a decree of involuntary dissolution in an action brought by the attorney general, nor shall the secretary of state file any certificate of surrender by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the state board of equalization and files with said court, clerk of the district court, or secretary of state as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the state board of equalization is satisfied from the available evidence that all taxes imposed by Title 84 of the Revised Codes of Montana have been paid. The issuance of the certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

History: En. Sec. 85, Ch. 300, L. 1967; division designation "(f)" from the last
amd. Sec. 2, Ch. 152, L. 1969. paragraph and inserted "except a decree
* * * by the attorney general" after "is
terminated" in the first sentence.

Amendments

The 1969 amendment deleted the sub-

15-2290. Jurisdiction of court to liquidate assets and business of corporation. The district courts shall have full power to liquidate the assets and business of a corporation:

(a) (1) to (4). * * * [Same as parent volume.]

(b) (1) and (2). * * * [Same as parent volume.]

(c) and (d). * * * [Same as parent volume.]

(e) Upon filing a verified petition and/or application by a stockholder, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 300, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or shareholders legally entitled to the same.

Proceedings under clause (a), (b), (c), or (e) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

History: En. Sec. 90, Ch. 300, L. 1967; any property, property rights or other assets, including money, which might be found after the conclusion of said pending proceedings."

Compiler's Notes

Section 3 of Chapter 174, Laws 1969 provided: "This act shall not apply to and shall not affect the rights and interests in any dissolved corporation as to which dissolution proceedings were, at the effective date of Chapter 198, Laws of Montana 1967 [December 31, 1968], being continued under the supervision of a court having jurisdiction, except as to

The effective date of chapter 300, Laws of 1967, referred to in subdivision (e), was December 31, 1968.

Amendments

The 1969 amendment inserted subdivision (e) and the reference to it in the following paragraph.

15-2295. Decree of involuntary dissolution. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease, or, in the event the proceedings is [are] under subdivision (e) of section 15-2290, R. C. M. 1947, the court shall make an order and decree of final distribution and liquidation, discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or for stockholders of such corporation.

History: En. Sec. 95, Ch. 300, L. 1967; amd. Sec. 2, Ch. 174, L. 1969.

conclusion of said pending proceedings."

The compiler has inserted the bracketed word "are."

Compiler's Notes

Section 3 of Chapter 174, Laws 1969 provided: "This act shall not apply to and shall not affect the rights and interests in any dissolved corporation as to which dissolution proceedings were, at the effective date of Chapter 198, Laws of Montana 1967 [December 31, 1968], being continued under the supervision of a court having jurisdiction, except as to any property, property rights or other assets, including money, which might be found after the

Amendments

The 1969 amendment added "or, in the event * * * stockholders of such corporation."

Effective Date

Section 4 of Ch. 174, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

15-22-104. Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto duly certified by manual or facsimile signature by the proper officer of the state or country of incorporation.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this act prescribed:

(1) to (3). * * * [Same as parent volume.]

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state shall be returned to the corporation or its representative.

History: En. Sec. 104, Ch. 300, L. 1967; amd. Sec. 3, Ch. 152, L. 1969. **Amendments**

The 1969 amendment substituted "certified" for "authenticated" in the first sentence.

15-22-109. Amendment to articles of incorporation of foreign corporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within sixty (60) days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state.

History: En. Sec. 109, Ch. 300, L. 1967; amd. Sec. 4, Ch. 152, L. 1969. **Amendments**

The 1969 amendment substituted "certified" for "authenticated."

15-22-110. Merger of foreign corporation authorized to transact business in this state. Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within sixty (60) days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

History: En. Sec. 110, Ch. 300, L. 1967; amd. Sec. 5, Ch. 152, L. 1969. **Amendments**

The 1969 amendment substituted "certified" for "authenticated."

15-22-117. Transacting business without certificate of authority.

DECISIONS UNDER FORMER LAW

License Tax Delinquency

Neither foreign corporation which cre-

ated and assigned accounts receivable before complying with laws of state nor

foreign corporation to which accounts receivable were assigned had right of enforcement until assignor paid license taxes under former statute providing that no contract of a foreign corporation is enforceable during the period of delinquency in payment of its fees and licenses, and although a subsequent compliance with

statute would remove bar of nonenforceability, removal would not relate back to date of original delinquency and would not bar superior rights of others that accrued during period of delinquency. *Manufacturers Acceptance Corp. v. Krsul*, 151 M 28, 438 P 2d 667.

15-22-121. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

(a) and (b). * * * [Same as parent volume.]

(c) Filing restated articles of incorporation and issuing a restated certificate of incorporation, twenty dollars (\$20).

(d) to (l). * * * [Same as parent volume.]

(m) Filing articles of dissolution and issuing a certificate of dissolution, five dollars (\$5).

(n) to (t). * * * [Same as parent volume.]

History: En. Sec. 121, Ch. 300, L. 1967; amd. Sec. 6, Ch. 152, L. 1969.

suing a restated certificate of incorporation" in subdivision (c) and "and issuing a certificate of dissolution" in subdivision (m).

Amendments

The 1969 amendment inserted "and is-

15-22-126. Penalties imposed upon officers and directors.

DECISIONS UNDER FORMER LAW

Liability of Officers and Directors

Under former statute providing for liability of directors for failure to file required annual report, directors were liable to creditors only for debts contracted during period corporation was in default in filing annual report but if report when filed was false, officers and not directors were liable to creditors for damages re-

sulting therefrom; false report was not same as no report, nor should court refrain from enforcing annual report requirements because statute did not require sufficient facts to apprise public of corporation's financial condition. *Mountain States Supply v. Mountain States Feed & Livestock Co.*, 149 M 198, 425 P 2d 75.

15-22-128. Secretary of state to notify corporation of expiration of existence. It shall be the duty of the secretary of state to notify every corporation organized after July 1, 1929, not less than three (3) months, nor more than six (6) months before the date of the expiration of its corporate existence, that its corporate existence is about to expire, which notice shall be given by registered letter addressed to such corporation at its principal place of business, as it appears from the last annual report.

Compiler's Notes

This section is reprinted to correct an error in the parent volume.

CHAPTER 23—MONTANA NONPROFIT CORPORATION ACT

Section

15-2354. Jurisdiction of court to liquidate assets and affairs of corporation.

15-2359. Decree of involuntary dissolution.

15-2383. Fees for filing documents and issuing certificates.

15-2354. Jurisdiction of court to liquidate assets and affairs of corporation. Courts of equity shall have full power to liquidate the assets and affairs of a corporation:

- (a) (1) to (5). * * * [Same as parent volume.]
 (b) (1) and (2). * * * [Same as parent volume.]
 (c) and (d). * * * [Same as parent volume.]

(e) Upon filing a verified petition and/or application by a member, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 198, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or members legally entitled to the same.

Proceedings under this section shall be brought in the district court in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

History: En. Sec. 54, Ch. 198, L. 1967; **Amendments**
 amd. Sec. 1, Ch. 62, L. 1969.

The 1969 amendment inserted subdivision (e).

15-2359. Decree of involuntary dissolution. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this act, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease, or, in the event the proceedings is [are] under subdivision (e) of section 15-2354, R. C. M. 1947, the court shall make an order and decree of final distribution and liquidation, discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or members of such corporation.

History: En. Sec. 59, Ch. 198, L. 1967; **Amendments**
 amd. Sec. 2, Ch. 62, L. 1969.

The 1969 amendment added “, or, in the event * * * of such corporation.”

Compiler's Notes

The compiler has inserted the bracketed word “are.”

Effective Date

Section 3 of Ch. 62, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 21, 1969.

15-2383. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

- (a) to (g). * * * [Same as parent volume.]
 (h) Filing articles of dissolution and issuing a certificate of dissolution, five dollars (\$5).
 (i) to (o). * * * [Same as parent volume.]

History: En. Sec. 83, Ch. 198, L. 1967; **Amendments**
 amd. Sec. 7, Ch. 152, L. 1969.

The 1969 amendment inserted “and is-

suing a certificate of dissolution," in subdivision (h), and deleted former subdivisions (p) and (q), for text of which see parent volume.

Effective Date

Section 8 of Ch. 152, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

CHAPTER 26—MONTANA DEVELOPMENT CREDIT CORPORATION ACT

Section

- 15-2601. Purpose.
- 15-2602. Definitions.
- 15-2603. Incorporators—general powers—capital stock—articles of incorporation.
- 15-2604. Certificate of incorporation.
- 15-2605. Amendment of articles of incorporation.
- 15-2606. Board of directors.
- 15-2607. Powers of stockholders and members.
- 15-2608. First meeting of corporation.
- 15-2609. Stock ownership and limitations.
- 15-2610. Members, and limitation and apportionment of loans by members.
- 15-2611. Withdrawal of membership.
- 15-2612. Surplus.
- 15-2613. Deposit of funds.
- 15-2614. Control—supervision—reports.
- 15-2615. Duration.
- 15-2616. Termination.
- 15-2617. Credit of state not pledged.
- 15-2618. Application to sections of Revised Codes of Montana 1947.

15-2601. Purpose. The purposes of the corporation shall be to promote, stimulate, develop, and advance the business prosperity and economic welfare of the state of Montana and its citizens; to encourage and assist through loans, investments, or other business transactions, in the location of new business and industry in this state and to rehabilitate and assist existing business and industry; and so to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standards of living of the citizens of this state; similarly, to co-operate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

In furtherance of such purposes and in addition to the powers conferred on business corporations by the provisions of Title 15 of the Revised Codes of Montana 1947, the corporation shall, subject to the restrictions and limitations herein contained, have the additional powers and functions enumerated herein.

History: En. Sec. 1, Ch. 128, L. 1969.

Title of Act

An act to authorize the incorporation of

development credit corporations for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state.

15-2602. Definitions. As used in this act, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) "Corporation": A Montana development credit corporation created under this act.

(2) "Financial institution": Any banking corporation or trust company, building and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

(3) "Member": Any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this act, upon its call, and in accordance with the provisions of this act.

(4) "Board of directors": The board of directors of the corporation created under this act.

(5) "Loan limit": For any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this act.

History: En. Sec. 2, Ch. 128, L. 1969.

15-2603. Incorporators—general powers—capital stock—articles of incorporation. Nine (9) or more persons, a majority of whom shall be residents of this state, who may desire to create a development credit corporation under the provisions of this act, for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated in the following manner: such persons shall by articles of incorporation filed in the manner prescribed in Title 15 of the Revised Codes of Montana 1947, under their hands and seals, set forth;

(1) The name of the corporation, which shall include the words "Development Credit Corporation of Montana."

(2) The location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors.

(3) The purpose for which the corporation is founded, which shall include the following:

(a) To elect, appoint, and employ officers, agents, and employees; to make contracts and incur liabilities for any of the purposes of the corporation; provided, that the corporation shall not incur any secondary liability by way of guaranty or endorsement of obligations of any person, firm, corporation, joint-stock company, association or trust, or in any other manner.

(b) To borrow money from the members, nonmember persons, firms or corporations, and state and federal agencies, for any of the purposes of the corporation: to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval; provided, that no loan to the corporation shall be secured in any manner unless all outstanding loans to the corporation shall be secured

equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

(c) To make loans to any person, firm, corporation, joint-stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith: provided, however, that the corporation shall not approve any application for a loan unless and until the person applying for said loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution.

(d) To participate with any duly authorized private lending agency, and city, state, and federal governmental lending agencies in the making of loans.

(e) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(f) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint-stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct, or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments.

(g) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association or trust, and while the owner or holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(h) To mortgage, pledge, or otherwise encumber any property, right or thing of value, acquired pursuant to the powers contained in paragraphs (e), (f), or (g), as security for the payment of any part of the purchase price thereof.

(i) To co-operate with and avail itself of the facilities of the state planning and economic development department and any similar governmental agencies; and to co-operate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof.

(j) To accept gifts, donations, bequests, devices, or grants from any person, corporation, association, or governmental agency whether state, federal, or municipal.

(k) To do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

(4) The articles of incorporation shall set forth the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, and the amount of capital stock with which it will commence business and, if there is more than one class of stock, a description of the different classes, and the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business.

(5) The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles of incorporation shall be in accordance with the provisions of Title 15, Revised Codes of Montana 1947, so far as consistent with this act.

History: En. Sec. 3, Ch. 128, L. 1969.

15-2604. Certificate of incorporation. Before the articles of incorporation shall become effective, the secretary of state must issue a certificate that a copy of the articles containing the required statement of facts has been filed in his office. Thereupon, the persons signing the articles and their associates and their successors and assigns, shall become a body politic and corporate, by the name specified in the articles of incorporation, subject to amendment and dissolution as provided in this act. The incorporators shall have the authority and shall perform such acts and things as required by the provisions of this act, as set forth in section 3 [15-2603] thereof.

History: En. Sec. 4, Ch. 128, L. 1969.

15-2605. Amendment of articles of incorporation. The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds ($\frac{2}{3}$) of the votes to which the stockholders shall be entitled and two-thirds ($\frac{2}{3}$) of the votes to which the members shall be entitled; provided that no amendment which is inconsistent with the general purposes expressed herein, or which eliminates or curtails the obligation of the corporation to make reports as provided in section 14 [15-2614], shall be made without amendment of this act; and provided, further, that no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position, of any outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided in section 11 [15-2611], or affects a member's voting rights as provided in section 7 [15-2607], shall be made without the consent of each member affected

by such amendment. Within thirty (30) days after any meeting at which amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and the due adoption thereof, shall so far as consistent with this act be submitted, as prescribed in Title 15, Revised Codes of Montana 1947, to the secretary of state, who shall examine them and if he finds that they conform to the requirements of this act, shall so certify and endorse his approval thereon. Thereupon, the amended articles of incorporation shall be filed in the office of the secretary of state and no such amendment shall take effect until such amended articles of incorporation shall have been filed as aforesaid.

History: En. Sec. 5, Ch. 128, L. 1969.

15-2606. Board of directors. The business and affairs of the corporation shall be managed and conducted by a board of directors, a president and treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize. The board of directors shall consist of such number, not less than nine (9), as shall be determined in the first instance by the incorporators and thereafter annually by the members and the stockholders of the corporation. The directors need not be stockholders or members in the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies in the office of director. The board of directors shall be elected in the first instance by the incorporators and thereafter at each annual meeting of the corporation, or, if no annual meeting shall be held in any year at the time fixed by the bylaws, at a special meeting held in lieu of the annual meeting. At each annual meeting, or at each special meeting held in lieu of the annual meeting, the stockholders shall elect the directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after their election and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws.

Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers.

History: En. Sec. 6, Ch. 128, L. 1969.

15-2607. Powers of stockholders and members. The stockholders and the members of the corporation shall have the following powers of the corporation: (a) to determine the number of and elect directors as provided in section 6 [15-2606] hereof; (b) to make, amend, and repeal bylaws; (c) to amend the articles of incorporation as provided in section 5 [15-2605]; (d) to exercise such other of the powers of the corporation as may be conferred on the stockholders and the members by the bylaws.

As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and except as otherwise herein provided, such matters

shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

Each stockholder shall have one (1) vote, in person or by proxy for each share of capital stock held by him, and each member shall have one (1) vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars (\$1,000.00) shall have one additional vote, in person or by proxy, regardless of the number of shares owned, for each additional one thousand dollars (\$1,000.00) which such member is authorized to have outstanding on loans to the corporation at any one time as determined under paragraph three (3) (b) of section 10 [15-2610].

History: En. Sec. 7, Ch. 128, L. 1969.

15-2608. First meeting of corporation. The first meeting of the corporation shall be called by a notice signed by three (3) or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed, or delivered, to each incorporator at least five (5) days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

At such first meeting the incorporators shall organize by the choice, by ballot, of a temporary clerk, by the adoption of bylaws, by the election by ballot of directors, and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Five (5) of the incorporators shall be a quorum for the transaction of business.

History: En. Sec. 8, Ch. 128, L. 1969.

15-2609. Stock ownership and limitations. Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) All domestic corporations organized for the purpose of carrying on business within this state including without implied limitation any public utility companies and insurance and casualty companies and foreign corporations licensed to do business in the state, and all trusts, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of said stock to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state;

(2) All financial institutions are hereby authorized to become members of the corporation by making loans to the corporation as provided herein;

(3) A financial institution which does not become a member of the corporation shall not be permitted to acquire any share of the capital stock of the corporation;

(4) Each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of the corporation, and while owners of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state; provided, that the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed ten per cent (10%) of the loan limit of such member. The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire.

History: En. Sec. 9, Ch. 128, L. 1969.

15-2610. Members, and limitation and apportionment of loans by members. Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by the board. The application for membership will specify the loan limit which shall be subject to call of the corporation, but in no case shall the amount so specified exceed the limit provided for in this act. Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand-dollar amount nearest the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation to its members would exceed ten (10) times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) Twenty per cent (20%) of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding, amounts validly called for loan but not yet loaned.

(b) The following limit, to be determined as of the time such member becomes a member on the basis of the most recent year-end balance sheet of such member at the close of its fiscal year immediately preceding its application for membership: Three per cent (3%) of the capital and surplus of commercial banks and trust companies; one per cent (1%) of the

total outstanding loans made by a building and loan association; two per cent (2%) of the capital and unassigned surplus of stock insurance companies; and such comparable limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) Subject to paragraph three (3) (a) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(5) All loans to the corporation by member shall be evidenced by bonds, debentures, notes or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest at a rate of not less than one-half of one per cent (.50 of 1%) in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans.

History: En. Sec. 10, Ch. 128, L. 1969.

15-2611. Withdrawal of membership. Membership in the corporation shall be for the duration of the corporation; provided that—

(a) Upon written notice given to the corporation two (2) years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to the withdrawal of said member.

History: En. Sec. 11, Ch. 128, L. 1969.

15-2612. Surplus. Each year the corporation shall set apart as earned surplus not less than ten per cent (10%) of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one hundred per cent (100%) of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the directors' determination made in good faith shall be conclusive on all persons.

History: En. Sec. 12, Ch. 128, L. 1969.

15-2613. Deposit of funds. The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated.

The corporation shall not receive money on deposit.

History: En. Sec. 13, Ch. 128, L. 1969.

15-2614. Control—supervision—reports. The corporation shall be subject to the examination of the state superintendent of banks, and shall make reports of its condition not less than annually to said superintendent, who in turn shall make copies of such reports available to the commissioner of insurance and to the governor. The corporation shall also file an annual statement required by Title 15, Revised Codes of Montana 1947.

History: En. Sec. 14, Ch. 128, L. 1969.

15-2615. Duration. The period of duration of the corporation shall be perpetual.

History: En. Sec. 15, Ch. 128, L. 1969.

15-2616. Termination. If a corporation organized pursuant to this act shall fail to begin business within five (5) years from the effective date of its articles of incorporation, then said articles shall become null and void.

History: En. Sec. 16, Ch. 128, L. 1969.

15-2617. Credit of state not pledged. Under no circumstances is the credit of the state pledged herein.

History: En. Sec. 17, Ch. 128, L. 1969.

15-2618. Application to sections of Revised Codes of Montana 1947. The provisions of Title 15 of the Revised Codes of Montana 1947, shall apply to the corporation in so far as they may be applicable and not inconsistent with this act.

History: En. Sec. 18, Ch. 128, L. 1969.

Separability Clause

Section 19 of Ch. 128, Laws 1969 read
"The provisions of this act are severable,

and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions."

TITLE 16—COUNTIES

Chapter

9. County commissioners—organization—meetings—compensation, 16-912.
10. General powers and duties of county commissioners, 16-1007.1, 16-1009.1, 16-1015.
11. Special powers and duties of county commissioners, 16-1182 to 16-1184.
15. County land advisory board, 16-1512.
16. Rural improvement districts, 16-1601(2), 16-1602.
17. Weed control, 16-1709.1, 16-1713.
18. Claims against counties, county warrants, 16-1803.
19. County budget system, 16-1904.
20. County finance—bonds and warrants, 16-2050.
26. County treasurer—duties as to warrants and other county finances, 16-2618.
27. Sheriff, 16-2724.
28. County jails, 16-2808.
42. Mosquito control districts, 16-4209, 16-4210.
43. Public hospital districts, 16-4301 to 16-4313.
44. Metropolitan sanitary and/or storm sewer systems, 16-4416.
45. County water and sewer districts, 16-4522, 16-4535.

CHAPTER 9—COUNTY COMMISSIONERS—ORGANIZATION—MEETINGS— COMPENSATION

Section

16-912. Compensation of members of board.

16-912. (4464) Compensation of members of board. (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class, shall receive an annual salary as hereinafter set forth:

First class	\$8,000
Second class	\$7,500
Third class	\$7,300
Fourth class	\$7,100

In addition, each member of the board of county commissioners in counties of the first, second, third and fourth class shall receive nine cents (\$.09) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties.

(2) Each member of the board of county commissioners in all other counties is entitled to thirty dollars (\$30) per day for each day's attendance on the sessions of the board but not to exceed four thousand dollars (\$4,000) per year, and nine cents (\$.09) per mile for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, provided, however, that any county commissioner whose place of residence is fifty (50) miles or more from the county seat, as measured by the usual route of travel, may elect to receive mileage as provided in this section or, in lieu of mileage, a sum of ten dollars (\$10) per day for each day's attendance on sessions of the board as expenses, while engaged in the performance of his official duties, and no other compensation must be allowed.

(3). * * * [Same as parent volume.]

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L.

1967; amd. Sec. 1, Ch. 223, L. 1967; amd. Sec. 1, Ch. 177, L. 1969.

Amendments

The 1969 amendment raised the annual salaries in subsection (1) from \$6,500 to \$8,000, \$6,300 to \$7,500, \$6,100 to \$7,300 and \$6,000 to \$7,100; in subsection (2), raised the per diem compensation from \$25 to \$30 and inserted a \$4,000 per year maximum.

CHAPTER 10—GENERAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section

- 16-1007.1. County authorized to obtain property by trade or purchase from any city, town or political subdivision—appraisal unnecessary.
 16-1009.1. County authorized to sell or trade property to city, town or political subdivision—resolution and notice of intent.
 16-1015. Taxation.

16-1007.1. County authorized to obtain property by trade or purchase from any city, town or political subdivision—appraisal unnecessary. A county shall have power to trade with, or purchase from, any city, town or political subdivision such property without an appraisal of the property traded or purchased.

History: En. Sec. 2, Ch. 302, L. 1969.

the purchase thereof, by a county without appraisal.

Title of Act

An act to permit counties power to sell or trade property to any city, town or political subdivision; and to provide for

Cross-References

Cities authorized to sell, trade or purchase property, secs. 11-964.1 and 11-964.2.

16-1009.1. County authorized to sell or trade property to city, town or political subdivision—resolution and notice of intent. A county upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for three (3) weeks in a newspaper published in such city, town or county in which located, shall have power to sell or trade, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the county business, to any city, town, or political subdivision, without an ordinance, public notice, public auction, bids, or appraisal; proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of county commissioners involved and entered in the minutes of the regular or special meetings.

History: En. Sec. 1, Ch. 302, L. 1969.

Cross-References

Cities authorized to sell, trade or purchase property, secs. 11-964.1 and 11-964.2.

16-1015. (4465.12) Taxation. The board of county commissioners has jurisdiction and power under such limitations and reservations as are prescribed by law to levy such tax annually on the taxable property of the county, for county purposes as may be necessary to defray the

current expenses thereof, including the salaries otherwise unprovided for, not exceeding twenty-four (24) mills, on each dollar of the taxable valuation for any one (1) year for counties of the fourth, fifth, sixth and seventh classes, and twenty-two (22) mills on each dollar of the taxable valuation for any one (1) year for counties of the first, second and third classes and to levy such taxes as are required to be levied by special or local statutes.

History: En. Subd. 13, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955; amd. Sec. 1, Ch. 48, L. 1957; amd. Sec. 1, Ch. 212, L. 1959; amd. Sec. 1, Ch. 205, L. 1961; amd. Sec. 1, Ch. 33, L. 1963; amd. Sec. 1, Ch. 18, L. 1965; amd. Sec. 1,

Ch. 128, L. 1967; amd. Sec. 1, Ch. 283, L. 1969. See history of section 16-1001.

Amendments

The 1969 amendment substituted "twenty-four (24) mills" for "twenty (20) mills" and inserted "for counties of the fourth * * * and third classes and" after "any one (1) year."

CHAPTER 11—SPECIAL POWERS AND DUTIES OF COUNTY COMMISSIONERS

Section

- 16-1182. Board of county commissioners may establish curfew for minors—administrative rules and regulations.
 16-1183. Law enforcement officials to enforce act.
 16-1184. Penalty—misdemeanor.

16-1182. Board of county commissioners may establish curfew for minors—administrative rules and regulations. The boards of county commissioners of the respective counties shall have power, by general order, from time to time, to establish a curfew hour, after which minors will not be allowed abroad on the public streets within the confines of unincorporated cities and towns of any such county; and shall have authority to make all proper and necessary administrative rules and regulations for the purpose of carrying into effect the provisions of this act.

History: En. Sec. 1, Ch. 29, L. 1969.

Compiler's Notes

Chapter 29, Laws 1969 provided: "It is the intent of the legislative assembly that this act be codified as one of the special powers enumerated in chapter 11 of Title [16] 15, Revised Codes of Montana, 1947."

The bracketed reference to Title 16 was substituted by the compiler for an erroneous reference to Title 15.

Title of Act

An act providing for the establishment of a curfew hour for minors in unincorporated cities and towns by general order of the board of county commissioners of the respective counties of Montana, providing a penalty and for enforcement repealing all acts and parts of acts in conflict herewith.

16-1183. Law enforcement officials to enforce act. The enforcement of the provisions of this act is enjoined upon every officer and official whose duty it is to enforce the laws of the state.

History: En. Sec. 2, Ch. 29, L. 1969.

16-1184. Penalty—misdemeanor. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding ten dollars (\$10.00).

History: En. Sec. 3, Ch. 29, L. 1969.

all acts and parts of acts in conflict therewith.

Repealing Clause

Section 4 of Ch. 29, Laws 1969 repealed

CHAPTER 12—COUNTY PRINTING COMMISSION

16-1225. Act how cited.

Cross-References

Printing defined, sec. 19-103.1.

CHAPTER 15—COUNTY LAND ADVISORY BOARD

Section

16-1512. Dispositions of property prior to 1969 validated.

16-1512. Dispositions of property prior to 1969 validated. All sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest are hereby validated and confirmed, and all instruments of transfer or conveyance heretofore made or executed by any county are hereby validated and confirmed, and all such sales, dispositions and instruments are hereby declared to have vested in the grantee or purchaser, as of the date thereof, all right, title, estate and interest of such county in and to the property described or covered.

History: En. Sec. 1, Ch. 78, L. 1969.**Title of Act**

An act to validate and confirm sales or dispositions heretofore made or attempted to be made by any county of any property in which such county had or claimed any right, title or interest, and

all instruments of transfer or conveyance heretofore made or executed by any county, and to declare that all such sales, dispositions and instruments have vested in the grantee or purchaser, as of the date thereof, all right, title and interest of the county in and to the property described or covered.

CHAPTER 16—RURAL IMPROVEMENT DISTRICTS

Section

16-1601(2). Rural improvement districts—creation and objects.

16-1602. Resolution of intention—publication, mailing and notice.

16-1601(2). (4574) Rural improvement districts—creation and objects.

Whenever the public interest or convenience may require, and upon the petition of sixty per centum (60%) of the freeholders affected thereby, the board of county commissioners is hereby authorized and empowered to order and create special improvement districts in thickly populated localities outside of the limits of incorporated towns and cities for the purpose of building, constructing, or acquiring by purchase devices intended to protect the safety of the public from open ditches carrying irrigation or other water, and maintaining sanitary and storm sewers, light systems, waterworks plants, water systems, sidewalks and such other special improvements as may be petitioned for.

The owner or owners of open ditches carrying irrigation or other water, shall not be included in any rural improvement districts under this act for the purpose of assessment to support the rural improvement districts for the installation, repair, or maintenance of any protective devices. Such devices or improvements shall provide access to, and shall not be constructed so as to hinder the operation and maintenance of the ditch.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 1, Ch. 147, L. 1921; re-en. Sec. 4574, R. C. M. 1921;

amd. Sec. 1, Ch. 133, L. 1929; amd. Sec. 1, Ch. 30, L. 1961; amd. Sec. 1, Ch. 304, L. 1969.

Amendments

The 1969 amendment inserted "devices

intended * * * or other water," before "and maintaining sanitary and storm sewers" in the first paragraph; and added the second paragraph.

16-1602. (4575) Resolution of intention—publication, mailing and notice. Before creating any special improvement district for the purpose of making any of the improvements, acquiring any private property for any purpose authorized by this act, the board of county commissioners shall pass a resolution of intention so to do, which resolution shall designate the number of such district, describe the boundaries thereof, and state therein the general character of the improvements which are to be made, designate the name of the engineer who is to have charge of the work, and an approximate estimate of the cost thereof. Upon having passed such a resolution the board of county commissioners must give notice of the passage of such resolution of intention, which notice must be published for ten consecutive days in a daily newspaper or in two issues of a weekly newspaper published nearest to the place where such improvement district is to be created, and shall also cause to be posted within the boundaries of such special improvement district, a copy of such notice in three public places, and a copy of such notice shall be mailed to every person, firm or corporation, or the agent of such person, firm or corporation owning real property within the proposed district, listed in his name upon the last completed assessment roll for state, county and school district taxes, at his last known place of residence upon the same day such notice is first published or posted.

Such notice must describe the general character of the improvement, or improvements, so proposed to be made, or acquired by purchase, state the estimated cost thereof, and designate the time when, and the place where, the board of county commissioners will hear and pass upon all protests that may be made against the making or maintenance of such improvements, or the creation of such district, and the said notice shall refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice shall state the exact purchase price of such existing improvement.

History: En. Ch. 123, L. 1915; superseded by Ch. 156, L. 1917; amd. Ch. 67, L. 1919; superseded by Sec. 2, Ch. 147, L. 1921; re-en. Sec. 4575, R. C. M. 1921; amd. Sec. 2, Ch. 134, L. 1961; amd. Sec. 1, Ch. 252, L. 1969.

Amendments

The 1969 amendment inserted "real" before "property" after "firm or corpora-

tion owning" and "listed in his name * * * school district taxes" after "proposed district" in the second sentence of the first paragraph.

Effective Date

Section 2 of Ch. 252, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 6, 1969.

16-1631. (4602) Transfer of management and control of district, etc.

Compiler's Notes

Chapter 123, laws of the fourteenth legislative assembly (1915), referred to in

this section, was repealed by Ch. 147, Laws 1921.

CHAPTER 17—WEED CONTROL

Section

16-1709.1. Weed control and weed seed extermination districts—formation.

16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation.

16-1709. Repealed.**Repeal**

Section 16-1709 (Sec. 5, Ch. 195, L. 1939; Sec. 1, Ch. 59, L. 1951), relating to

creation of weed control and weed seed extermination districts, was repealed by Sec. 3, Ch. 185, Laws 1969.

16-1709.1. Weed control and weed seed extermination districts—formation. A weed control and weed seed extermination district shall be formed in every county of this state and shall include all the land within the boundaries of the county.

History: En. 16-1709.1 by Sec. 1, Ch. 185, L. 1969.

Title of Act

An act providing that a weed control district be formed in every county; amend-

ing section 16-1713, R. C. M. 1947, by eliminating the language referring to city and town district; and repealing sections 16-1709, 16-1710, 16-1711, 16-1712 and 16-1723, R. C. M. 1947.

16-1710 to 16-1712. Repealed.**Repeal**

Sections 16-1710 to 16-1712 (Secs. 6 to 8, Ch. 195, L. 1939; Sec. 1, Ch. 228, L. 1947; Sec. 1, Ch. 60, L. 1951), relating to

the creation of weed control and weed seed extermination districts, were repealed by Sec. 3, Ch. 185, Laws 1969.

16-1713. Appointment of weed control and weed seed extermination supervisors—term of office—compensation. The board of county commissioners of each county shall appoint a county weed board consisting of three (3) or five (5) members. If a five (5) member board, three (3) members shall be rural agricultural landowners within the county, two (2) from municipalities within the county. If a three (3) member board, two (2) members shall be rural agricultural landowners within the county and one (1) member shall be from a municipality within the county. They shall be appointed for a period of one (1), two (2), and three (3) years respectively for a three (3) member board or should a five (5) member board be selected, they shall be appointed for one (1) and two (2) year terms respectively dating from the preceding July, and thereafter an appointment or reappointment shall be made annually by the board of county commissioners. Said supervisors shall be public officers, and they shall organize by choosing a chairman and a secretary. The secretary may or may not be a member of the board. All such supervisors shall be entitled to mileage, and per diem of ten dollars (\$10) per day. The supervisors may employ suitable and competent persons as assistants and employees as may be necessary and provide for their compensation. It shall be the duties of said supervisors to supervise within their county the control program.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969.

Amendment

The 1969 amendment revised this section to insert provisions for five-member boards.

Repealing Clause

Section 3 of Ch. 185, Laws 1969 read
 "Sections 16-1709, 16-1710, 16-1711, 16-

1712, and 16-1723, R. C. M. 1947, are repealed."

16-1723. Repealed.**Repeal**

Section 16-1723 (Sec. 1, Ch. 206, L. 1953; Sec. 1, Ch. 47, L. 1965), relating to

the dissolution of weed control and weed seed extermination districts, was repealed by Sec. 3, Ch. 185, Laws 1969.

CHAPTER 18—CLAIMS AGAINST COUNTIES, COUNTY WARRANTS

Section

16-1803. Procedure when request for bids is necessary in making contracts for purchases and for construction of buildings exceeding two thousand five hundred dollars (\$2,500).

16-1803. (4605.1) Procedure when request for bids is necessary in making contracts for purchases and for construction of buildings exceeding two thousand five hundred dollars (\$2,500). (1) No contract shall be entered into between a board of county commissioners for the purchase of any automobile, truck, or other vehicle, or road machinery, or for any other machinery, apparatus, appliances or equipment, or for any materials or supplies of any kind for which must be paid a sum in excess of four thousand dollars (\$4,000), or for the construction of any building, for which must be paid a sum in excess of two thousand five hundred dollars (\$2,500) without first publishing a notice calling for bids for furnishing the same, which notice must be published at least once a week, for three (3) consecutive weeks before the date fixed therein for receiving bids, in the official newspaper of the county, and every such contract shall be let to the lowest and best responsible bidder; provided that the provisions of this section shall not apply to contracts for public printing entered into in accordance with the provisions of chapter 12 of Title 16 and provided further, that the provisions of this section shall not apply to contracts for purchases, which in the opinion of the board, are made necessary by fires, flood, explosion, storm, earthquake, or other elements, epidemic, riot, insurrection, or for the immediate preservation of order, or of the public health, or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, mischief, or for the relief of a stricken community overtaken by calamity.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969.

Amendments

The 1969 amendment inserted "for which must be paid * * * four thousand dollars" after "materials or supplies of any kind" and substituted "two thousand five hundred dollars (\$2,500)" for "two thousand dollars" after "a sum in excess of" in subsection (1).

Compiler's Notes

Sections 16-1201 to 16-1224, of chapter 12, Title 16, referred to in subsection (1), were repealed by Sec. 10, Ch. 280, Laws 1967.

CHAPTER 19—COUNTY BUDGET SYSTEM

Section

16-1904. Hearings on budget—adoption—fixing tax levies.

16-1904. (4613.4) Hearings on budget — adoption — fixing tax levies.

(1). * * * [Same as parent volume.]

(2) Upon the conclusion of such hearing the board shall first determine and fix the amount which it is estimated will accrue to each fund during the fiscal year from all sources, except the taxation of property, but in so doing the board shall not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during any preceding fiscal year, or years. The board shall then determine and fix separately the amount appropriated for and authorized to be expended for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for the expenditures so authorized; provided that there shall not be added to the amount to be appropriated and authorized to be expended for any item, or to the total amount appropriated and authorized to be expended from any fund any amount or percentage whatever because of any anticipated loss of revenue by reason of the nonpayment of taxes levied for such fiscal year; and provided further that the amount appropriated and authorized to be expended for any item contained in such budget, except for salaries which must not exceed by more than ten per centum (10%) the amount appropriated and authorized for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding and except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants and interest thereof, must not exceed by more than five per centum (5%) the amount appropriated and authorized for such item under the appropriation contained in the budget approved and adopted for the fiscal year immediately preceding, and the total amount appropriated and authorized to be expended from any fund, except for capital outlay, election expenses and payment of emergency warrants and interest thereon, shall not exceed by more than five per centum (5%) the total amount appropriated and authorized for all purposes, except for salaries which must not exceed ten per centum (10%) the amount appropriated and authorized from such fund under the appropriation made from such fund in the budget adopted for the fiscal year immediately preceding and except for capital outlay, election expenses, expenditures from county poor funds, and payment of emergency warrants, from such fund under the appropriation made from such fund in the budget approved and adopted for the fiscal year immediately preceding, provided further that the foregoing limitations shall not apply to appropriations and expenditures authorized to be made from the county poor fund for payment of bonds and emergency warrants and interest thereon; and provided further that the total expenditures authorized to be made from any fund, including reserve added thereto as hereinafter provided, shall not, in any event, exceed the aggregate of the cash balance in such fund at the close of the fiscal year immediately

preceding, the amount of estimated revenues to accrue to such funds, as determined and fixed in the manner herein provided, and the amount which may be raised for such fund by a lawful tax levy during the fiscal year.

(3) to (6). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 148, L. 1929; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969.	Amendments The 1969 amendment inserted exceptions relating to salaries in subsection (2).
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CHAPTER 20—COUNTY FINANCE—BONDS AND WARRANTS

Section

16-2050. Investment of county moneys in county warrants and investment of school district or county high school moneys.

16-2050. (4639.1) Investment of county moneys in county warrants and investment of school district or county high school moneys. (1) Except as provided in subsection (2) of this section, whenever the county has under its control any moneys, for which there is no immediate demand, in any special fund subject to deposit which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county, thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance, and in case of such purchase the county commissioners shall designate the fund or funds, to be so invested, and shall fix the amount thereof, and shall also designate the county warrant or warrants which are to be purchased by such funds. The county clerk and recorder shall thereupon cause to be attached to or stamped, written or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board of county commissioners, and the warrant so purchased shall be registered as other county warrants, and bear interest as provided by law. When the designated amounts have been invested the county treasurer shall notify the county clerk and recorder. Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings, or for other construction, may be invested in any time or savings deposits, United States certificates of indebtedness, United States treasury notes or United States treasury bonds having a maturity date of one (1) year or less when emergency conditions, beyond the control of the county commissioners, exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made. Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of subsection (6) of section 16-2618.

(2) Whenever the county has under its control any moneys realized from the sale of bonds by a school district or county high school for the

purpose of construction, for which there is no immediate demand, which in the judgment of the governing body of the school district or county high school it would be advantageous to invest in any time or savings deposits or in short-term obligations of the United States of America, such governing body may in its discretion direct the county treasurer to make such investments. Interest earned from such investments, except interest on the sale of bonds accrued in the period between the date of issue and the time of purchase which must be credited to the sinking fund, may be credited to the sinking fund of the said school district or county high school, provided that in the event construction of said buildings is delayed for a period longer than six (6) months due to court action or other causes beyond the control of the trustees, the trustees may direct that interest earned be credited to the fund from which the money was withdrawn. The trustees may authorize expenditures from interest earned, except as provided above, for furnishing and equipping the buildings for which the bonds were sold.

History: En. Sec. 1, Ch. 144, L. 1927; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969.

Amendments

The 1969 amendment added the last sentence to subsection (1); inserted "ex-

cept interest * * * must be credited to the sinking fund" after "such investments," substituted "may be credited" for "shall be credited," deleted "notwithstanding the provisions of subsection (6) of section 16-2618" at the end of the second sentence and added the proviso; and added the third sentence to subsection (2).

CHAPTER 26—COUNTY TREASURER—DUTIES AS TO WARRANTS AND OTHER COUNTY FINANCES

Section

16-2618. Deposit of public funds by county, city and town treasurers.

16-2618. (4767) Deposit of public funds by county, city and town treasurers. (1). * * * [Same as parent volume.]

(2) Said board of county commissioners, city or town council may require security for only any such portion of deposits as is not guaranteed or insured according to law. Such security shall consist of cashier's check or checks issued by the Federal Reserve Bank, bonds of the United States government and its dependents, bonds guaranteed by the United States government or its dependents, bonds and warrants of the state of Montana, bonds and warrants of any county of the state of Montana, and bonds of any city, town or school district of the state of Montana, which are a general obligation of such county, city, town or school district, bonds of the Federal Land Banks, Federal Intermediate Credit Bank debentures, Federal Home Loan Bank notes and bonds, Bank for Co-operatives' debentures, Federal National Mortgage Association notes, bonds and guaranteed certificates of participation, obligations of or fully guaranteed by the Government National Mortgage Association, Farmers' Home Administration insured notes, notes fully guaranteed as to principal and interest by the Small Business Administration, Federal Housing Administration debentures, general obligation bonds of other states and counties of other states and bonds issued in the United States of America, which are quoted on the New York market which shall be acceptable at not to exceed ninety

per centum (90%) of such market quotation.

(3) to (8). * * * [Same as parent volume.]

History: Ap. p. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R. C. M. 1921; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; amd. Sec. 1,

Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969. Cal. Pol. C. Sec. 4161.

Amendments

The 1969 amendment rewrote the second sentence of subsection (2).

CHAPTER 27—SHERIFF

Section

16-2724. Purchase or lease of sheriff's vehicle authorized—operation and maintenance costs—mileage.

16-2724. Purchase or lease of sheriff's vehicle authorized—operation and maintenance costs—mileage. The board of county commissioners, when requested to do so by the county sheriff, may purchase or lease motor vehicles from county funds for the use of the sheriff or any person employed by him and may also pay for the operation and maintenance of those vehicles from county funds. No mileage shall be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general fund.

History: En. Sec. 1, Ch. 114, L. 1969.

Title of Act

An act to provide that the board of county commissioners may purchase or

lease motor vehicles from county funds for the use of the county sheriff or any person employed by him and may also pay for the operation and maintenance of those vehicles from county funds.

CHAPTER 28—COUNTY JAILS

Section

16-2808. Provision and agreement for use of county jails for federal prisoners.

16-2808. (12472.2) Provision and agreement for use of county jails for federal prisoners. Provision and agreement for the use of said jails and the support and subsistence of such federal prisoners shall first be made by the United States through or by the proper officer or officers, with the board of county commissioners of the county wherein such prisoners are to be confined, such agreement to be in writing and contain a provision that the United States shall, upon claim presented for the county by its county clerk and recorder, pay into the county treasury of the county the sum of five dollars (\$5) per day for each and every prisoner held in the county jail upon order or commitment of the United States government or any department or officer thereof. The sheriff of the county, who has custody of such prisoners, shall be paid by the county for their support and subsistence at the rate of two dollars and fifty cents (\$2.50) per day, per prisoner.

History: En. Sec. 2, Ch. 120, L. 1923; amd. Sec. 1, Ch. 34, L. 1931; amd. Sec. 1, Ch. 253, L. 1969.

Amendments

The 1969 amendment increased the per

diem payment for holding federal prisoners in county jails from \$1.00 to \$5.00; and increased the payment by the county to the sheriff from 75¢ to \$2.50 per day.

CHAPTER 32—COUNTY AUDITOR

16-3204. (4826) Oath.

Cross-References

Bonds of county officers and employees, sec. 6-203 et seq.

CHAPTER 34—COUNTY CORONER

16-3401. (4848) Coroner to hold inquest.

Compiler's Notes

Sections 94-201-1 to 94-201-12, referred

to in this section, were repealed by Sec. 2, Ch. 196, Laws 1967.

CHAPTER 42—MOSQUITO CONTROL DISTRICTS

Section

16-4209. State mosquito control advisory committee—members—duties.

16-4210. Mosquito control fund.

16-4209. State mosquito control advisory committee—members—duties.

(a) There is hereby established a state mosquito control advisory committee which shall have representation from: state entomologist, state department of health, and the departments of agricultural engineering, agronomy and soils of Montana state university. The state entomologist shall be the chairman of said committee.

(b) It shall be the duty of such committee to advise the commissioners of any county relative to the creation of mosquito control districts within such county and upon request to advise the boards of such districts in connection with their control programs.

(c) Annually on or before the first (1st) day of February, the board of each district shall submit to the state entomologist and state department of health for review and advice a written report of its operations for the preceding year and a written plan covering its control program for the ensuing year.

History: En. Sec. 9, Ch. 183, L. 1953; amd. Sec. 1, Ch. 2, L. 1969.

Amendments

The 1969 amendment, in the first sentence of subsection (a), inserted "control" before "advisory committee," substituted "have representation * * * department of health, and" for "be composed of the state board of entomology and the heads

of," and substituted "university" for "college," in the second sentence, substituted "state entomologist" for "chairman of the state board of entomology"; in subsection (b), inserted "upon request" before "to advise"; and, in subsection (c), substituted "the state entomologist and the state department of health" for "such committee" and deleted "its" before "review and advice."

16-4210. Mosquito control fund. The board of county commissioners of any county within which a mosquito control board has been created

shall establish a mosquito control fund, and at the time fixed by law for levy and assessment of taxes shall levy a tax of not exceeding five (5) mills on the dollar of the total taxable valuation in such district on all property situated within the said district, the proceeds of which shall be placed in a separate fund with the county treasurer of such county and shall be used solely for the purpose for which such mosquito control district was created. Warrants upon such fund shall be drawn by the board of county commissioners upon the presentation of claims approved by the mosquito control board.

History: En. Sec. 10, Ch. 183, L. 1953;
amd. Sec. 1, Ch. 22, L. 1969.

Amendments

The 1969 amendment substituted "all property" for "real property" before "situated within the said district" in the first sentence.

CHAPTER 43—PUBLIC HOSPITAL DISTRICTS

Section

- 16-4301. Purpose of act—allowable territory embraced within public hospital district.
- 16-4302. Petition to board of county commissioners.
- 16-4303. Hearing.
- 16-4304. Reference of creation of district at election.
- 16-4305. Resolution and order of board as respects election.
- 16-4306. Favorable vote—commissioners finally to organize district.
- 16-4307. Government of district—appointment, election and terms of trustees.
- 16-4308. Powers of district.
- 16-4309. Budget and tax levy.
- 16-4310. Tax collections and funds.
- 16-4311. Withdrawal of portion of district, petition for.
- 16-4312. Alteration of boundaries—annexation.
- 16-4313. Dissolution of district.

16-4301. Purpose of act—allowable territory embraced within public hospital district. The purpose of this act is to authorize the establishment of public hospital districts which shall have power to supply hospital facilities and services to residents of such districts, and as herein authorized, to others. A public hospital district may contain the entire territory embraced within a county or any portion or subdivision thereof.

History: En. Sec. 1, Ch. 155, L. 1953;
amd. Sec. 1, Ch. 257, L. 1969.

Amendments

The 1969 amendment deleted "to own and operate public hospitals, or to lease

and operate public hospitals, or to maintain or aid in the maintenance and operation of a public hospital, and in either case" after "shall have power" in the first sentence.

16-4302. Petition to board of county commissioners. Proceedings for creation of a hospital district shall be initiated by a petition, signed by not less than thirty per centum (30%) of the qualified electors of the proposed hospital district, who are taxpayers upon property within the proposed hospital district and whose names appear on the last completed assessment roll for state and county taxes. The petition may consist of one (1) sheet or several sheets identical in form and fastened together after being circulated and signed so as to form a single, complete petition before being delivered to the county clerk. The petition shall give the post-office address and voting precinct of each petitioner. Only persons who are qualified to

sign such petitions shall be qualified to circulate the same, and there shall be attached to the complete petition the affidavit of some person who circulated or assisted in circulating the petition, that he believes the signatures thereon are genuine and the signers knew the contents thereof before signing the same. The complete petition, addressed to the board of county commissioners of the county in which the proposed district is situated, shall be filed with the county clerk, who shall within fifteen (15) days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners, and attach it to a certificate under his official signature and the seal of his office, which certificate shall set forth:

(1) The total number of persons who are registered electors within the proposed hospital district and whose names appear upon the last completed assessment roll for state and county taxes.

(2) Which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition.

(3) Whether such qualified signers constitute more or less than thirty per cent (30%) of the registered electors of the proposed hospital district who are taxpayers upon property thereon and whose names appear on the last completed assessment roll for state and county taxes. The county clerk shall present the petition and his certificate to the board of county commissioners at its first meeting held after he has attached his certificate. The board shall thereupon carefully examine the petition and, if it is found that the petition is in proper form and bears the requisite number of signatures of qualified petitioners, the board shall by resolution call a hearing on the creation of such hospital district. A notice of such hearing shall be published in a newspaper having general circulation in the territory within the boundaries of the proposed hospital district, once each week for at least two (2) weeks, the last publication to be at least two (2) weeks before the hearing. If there is no newspaper having general circulation within the boundaries of the proposed hospital district, the notice of hearing shall be posted in at least three (3) public places within the boundaries of the proposed district for two (2) weeks before the hearing. The notice shall state the time, date, place and purpose of the hearing, describe the boundaries of the proposed hospital district, and state that any person residing in or owning property within the proposed hospital district may appear in support of or in opposition to the petition at such hearing.

History: En. Sec. 2, Ch. 155, L. 1953; am'd. Sec. 2, Ch. 257, L. 1969.

Amendment

The 1969 amendment rewrote this sec-

tion and, inter alia, inserted specific provisions as to form, circulation and certification of the petition. For previous text, see parent volume.

16-4303. Hearing. At the time fixed for said hearing, the board shall hear all competent and relevant testimony offered in support of or in opposition to said petition and the creation of such district. Said hearing may be adjourned from time to time for the determination of said facts, or hearing petitioners or objectors, without additional published or posted

notice, but no adjournment shall exceed two (2) weeks in all from and after the date originally noticed and published for the hearing.

History: En. Sec. 3, Ch. 155, L. 1953; amd. Sec. 3, Ch. 257, L. 1969.

Amendments

The 1969 amendment deleted "determine whether or not the petition complies with the requirements hereinbefore set forth and whether or not the notice required

herein has been published as required" from the end of the first sentence, and "At such hearing the board must" from beginning of former second sentence, making the present first sentence; and inserted "without additional published or posted notice," after "petitioners or objectors" in the second sentence.

16-4304. Reference of creation of district at election. The board of county commissioners, upon completion of the hearing hereinabove provided for, shall thereupon proceed by resolution to refer the question of the creation of such district to the persons qualified to vote on such proposition. Said board, in its resolution of reference, may make such changes in the boundaries of the proposed district as it may deem advisable, without, however, including any additional lands not described in the petition, and it shall call an election, upon the question of the creation of the district.

History: En. Sec. 4, Ch. 155, L. 1953; amd. Sec. 4, Ch. 257, L. 1969.

Amendments

The 1969 amendment, in the first sentence, deleted "If" at the beginning, substituted "upon completion * * * provided for" for "shall determine that the peti-

tioners have complied with the requirements herein set forth and that the prescribed notice has been published, It" and deleted "as in this act prescribed" at the end; and in the second sentence, deleted "and shall define and establish the boundaries of the district" after "described in the petition."

16-4305. Resolution and order of board as respects election. The board must, in its resolution, designate whether a special election shall be held, or whether the matter shall be determined at the next general election. If a special election is ordered, the board must, in its order, specify the date for such election, the voting places, and shall appoint and designate judges and clerks therefor. The election shall be held in all respects as nearly as practicable in conformity with the general election laws; provided that if a special election is held the polls shall be open from 8 a. m. to 6 p. m., on the day appointed for such election. At such election, the ballots must contain the words "Hospital District, Yes" and "Hospital District, No." The judges of the election shall certify to the board of county commissioners the results of said election. No person shall be qualified to vote at such election who has not attained legal age, who is not an owner of property within the boundaries of said district as defined by the board, and whose name does not appear on the last completed assessment roll of the county. Only qualified, registered electors residing within the proposed hospital district, who are taxpayers upon property therein and whose names appear on the last completed assessment roll for state and county taxes shall have the right to vote on the question of the creation of the hospital district.

History: En. Sec. 5, Ch. 155, L. 1953; amd. Sec. 5, Ch. 257, L. 1969.

Amendments

The 1969 amendment added the last sentence; and made numerous wording changes as follows: in the first sentence,

deleted "or not" after "designate whether"; in the second sentence, substituted "date for such election" for "time and place for such election" and deleted "in said order" before "appoint and designate"; in the proviso of the third sentence, inserted "if a special election is

held" and deleted "o'clock" before "a.m." substituted "legal age" for "twenty-one and "p. m."; and in the sixth sentence, (21) years of age."

16-4306. Favorable vote—commissioners finally to organize district. In the event that a majority of the votes cast are in favor of the creation and establishment of said hospital district, the board of county commissioners shall, within ten (10) days after the election, by resolution certify such result, and proceed with the organization of such district as herein specified. After twenty (20) days from the passage of such resolution, the validity of the creation of such hospital district and the regularity of all proceedings preliminary thereto, shall not be questioned or asserted in any legal action.

History: En. Sec. 6, Ch. 155, L. 1953; **Amendments**
amd. Sec. 6, Ch. 257, L. 1969.

The 1969 amendment added the second sentence.

16-4307. Government of district—appointment, election and terms of trustees. Said hospital district shall be governed and managed by a board of three (3) trustees, elected by the registered electors residing in the district. The trustees must be elected from among the registered electors qualified to vote at general elections within said district. The first board of trustees shall be elected at the same election held upon the creation of the district, subject to the creation thereof, shall qualify upon the organization of the district, if created, and the trustees may be nominated and have their names appear upon the ballots upon the filing with the board of county commissioners of a petition signed by any five (5) qualified electors of the district. Any elector may sign as many nominating petitions as there are persons to be elected. The trustees elected for the first board shall serve for terms commencing upon their being elected and qualified and terminating one (1) two (2) and three (3) years respectively, from the first Monday in May following their election, and until their respective successors shall be elected and qualify. Annually thereafter there shall be elected a trustee to serve for a term of three (3) years and until his successor shall be elected and qualify and such term of three (3) years shall commence on the first Monday in May following the said trustee's election. All elections and nominations for election of trustees thereafter, shall be conducted by said qualified voters in the same manner as provided by the laws of the state of Montana for the election of school trustees of a second or third class school district, provided that wherever in the said laws of the state of Montana it is provided that certain action shall be performed or filings made with the clerk of the school board, the trustees or the board of trustees of the school district or the county superintendent of schools, the same shall, for the purposes of this act, be taken to refer to the clerk of the board of trustees of the public hospital district, the trustees or the board of trustees of the public hospital district or the county clerk, respectively. The trustees at their first meeting shall adopt bylaws for the government and management of the district, and shall appoint a qualified person to serve as clerk of the said board, who may or may not be one of their number. The trustees shall serve without pay. A vacancy upon the board of trustees, or in the office of

clerk shall be filled by appointment by the remaining members and the appointee shall serve until the next ensuing election for trustees.

History: En. Sec. 7, Ch. 155, L. 1953; amd. Sec. 1, Ch. 97, L. 1955; amd. Sec. 7, Ch. 257, L. 1969.

Amendments

The 1969 amendment, in the first sentence, substituted "registered electors residing in the district" for "persons within the district who have the same quali-

fications as voters upon the question of 'creation of the district' "; divided the former second sentence into the present second and fifth sentences; in the second sentence, substituted "registered electors qualified to vote at general elections" for "freeholders residing within said district"; and rearranged the order of the sentences.

16-4308. Powers of district. A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance and administration of such hospital facilities as its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:

(1) Employ nursing, administrative, and other personnel, legal counsel, engineers, architects, accountants, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits, or by such fees as may be agreed upon;

(2) Cause reports, plans, studies, and recommendations to be prepared;

(3) Lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, conditional sales contract, or otherwise, and acquire real or personal property by gift;

(4) Lease or construct, equip and furnish necessary buildings and grounds and maintain the same;

(5) Adopt, by resolution, rules and regulations for the operation and administration of any and all hospital facilities under its control, and for the admission of persons thereto;

(6) Impose by resolution, and collect charges for all services and facilities provided and made available by it;

(7) Levy taxes as hereinafter prescribed;

(8) Borrow money and issue bonds as hereinafter prescribed;

(9) Procure insurance against liability of the district or its officers and employees or both, for torts committed within the scope of their official duties, whether governmental or proprietary, and against damage to or destruction of any of its facilities, equipment, or other property;

(10) Sell or lease any of its facilities or equipment as may be deemed expedient;

(11) Cause audits to be made of its accounts, books, vouchers, and funds by competent public accountants. Such a hospital district must admit to its facilities persons without regard to race, color, or sex, but such obligation shall not prevent the board of trustees of such hospital district from establishing reasonable minimum rates for hospital quarters, services and supplies; indigents needing such services, and for the rendition of which provision is made by the laws of Montana, must be admitted to such public hospitals, on terms and rates prescribed or authorized by law. A hospital district may borrow money by the issuance of its bonds to provide funds

for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension and betterment of hospital facilities, and to provide an adequate working capital for a new hospital, but the amount of bonds issued for such purpose and outstanding at any time shall not exceed five per cent (5%) of taxable property therein, as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds. Such bonds shall be authorized, sold, issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of second or third class school districts by sections 75-3903 through 75-3934. Nothing herein shall be construed to preclude the provisions of sections 69-5301 through 69-5313 allowing the state to apply for and accept federal funds.

History: En. Sec. 8, Ch. 155, L. 1953;
amd. Sec. 8, Ch. 257, L. 1969.

Amendment

The 1969 amendment rewrote this sec-

tion, rewording the general grant of powers, placing it at the beginning of the section, and adding additional specified powers. For previous text, see parent volume.

16-4309. Budget and tax levy. The board of hospital trustees shall, annually, present their budget to the board of county commissioners at the regular budget meetings as prescribed by law, and therewith certify the amount of money necessary and proper for the ensuing year. The board of county commissioners must, annually, at the time of levying county taxes, fix and levy a tax, in mills, upon all property within said hospital district clearly sufficient to raise the amount certified by the board of hospital trustees. The tax so levied for all hospital district purposes other than payment of bonded indebtedness shall not in any year exceed three (3) mills on each dollar of taxable valuation of property within said district.

History: En. Sec. 9, Ch. 155, L. 1953;
amd. Sec. 9, Ch. 257, L. 1969.

Amendments

The 1969 amendment inserted "for all hospital district purposes other than payment of bonded indebtedness" after "The tax so levied" in the last sentence.

16-4310. Tax collections and funds. The procedures for the collection of the tax shall be in accordance with the existing laws of the state of Montana. The funds collected under the tax levy shall be held by the county treasurer who shall be, ex officio, the treasurer for the hospital district and such treasurer shall keep a detailed account of all tax moneys paid into the fund, of all other moneys from any source received by the district, and of all payments and disbursements from the fund. Funds shall be paid out on warrants issued by direction of the board of trustees, signed by the majority of its membership.

History: En. Sec. 10, Ch. 155, L. 1953;
amd. Sec. 2, Ch. 97, L. 1955; amd. Sec. 10,
Ch. 257, L. 1969.

Amendments

The 1969 amendment substituted the

caption "Tax collections and fines" for "Regulations"; and deleted the former first sentence which read, "The trustees shall make proper rules and regulations for the management of such hospitals."

16-4311. Withdrawal of portion of district, petition for. Any portion of a public hospital district may be withdrawn therefrom as in this section

provided, upon receipt of a petition signed by fifty-one per centum (51%) of the taxpayers, or more, residing in and owning property within the area desired to be withdrawn from any public hospital district, on the grounds that such area will not be benefited by remaining in said district. The board of county commissioners shall, upon the filing of such a petition, fix a time for the hearing of such withdrawal petition which time shall not be more than four (4) weeks after the receipt thereof. The board shall, at least two (2) weeks prior to the time so fixed, publish a notice of such hearing in two (2) successive issues of a newspaper published in the county. No petition for withdrawal shall be entertained or acted upon by the board, unless the same is filed before the first Monday in March of any year. Any person interested may appear at said hearing and present objections to the withdrawal of said portion from said district. The board shall consider the petition and all objections thereto, and pass upon the merits thereof, and make its order in accordance therewith. Any withdrawal shall be effective as of March 1 following the issuance of the withdrawal order. Such order is subject to review by the district court of the county, and appeal may be taken from the final judgment of such district court to the supreme court of Montana. All taxable property within the withdrawn area shall remain subject to taxation for any bonded indebtedness of the hospital district existing as of the effective date of the withdrawal, to the same extent as it would have been subject if not withdrawn.

History: En. Sec. 11, Ch. 155, L. 1953;
amd. Sec. 11, Ch. 257, L. 1969.

Amendments

The 1969 amendment inserted the seventh sentence and added the last sentence.

16-4312. Alteration of boundaries—annexation. The boundaries of any such public hospital district may be altered and outlying districts be annexed from territory contiguous thereto in the following manner: A petition signed by ten per centum (10%) or more freeholders within the territory proposed to be annexed, or by a majority of such freeholders if there are less than twenty-five (25) residing within the area proposed to be annexed, designating the boundaries of such contiguous territory proposed to be annexed and asking that it be annexed to said public hospital district, shall be presented to the board of county commissioners of the county in which said public hospital district is situated. At the first regular meeting after the presentation of said petition, said board of county commissioners shall cause notice of said petition to be published in two (2) successive issues of a newspaper published in the county prior to the date fixed by said board for the hearing of said petition, which date shall be not less than four (4) weeks after the filing of such petition. Upon the date fixed for such hearing or continuance thereof, said board shall take up and consider said petition and any objections which may be filed to the inclusion of any additional area or territory in said district. Said board of county commissioners shall have the power by order entered on its minutes to grant said petition either in whole or in part, and by order entered on its minutes to alter the boundaries of said public hospital district and to annex thereto all, or such portion of said area or territory described in said petition as will be benefited thereby. This territory shall

become and be a part of such public hospital district on the date fixed in the order of annexation, and shall be subject to the taxes authorized by this act, including taxes for any pre-existing indebtedness, together with the pre-existing area of said district, and such taxes shall be uniform for the whole area and territory in the district, as enlarged.

History: En. Sec. 12, Ch. 155, L. 1953; ence, inserted "on the date fixed in the
amd. Sec. 12, Ch. 257, L. 1969. order of annexation," substituted "taxes"

Amendments

The 1969 amendment, in the last sen-

for "tax" in two instances, and inserted
"including taxes for any pre-existing in-
debtedness."

16-4313. Dissolution of district. At any time after five (5) years from the date any public hospital district is created, such district may be dissolved upon presentation to the board of county commissioners of a petition signed by at least fifty-one per centum (51%) of the owners of property lying within such district as shown by the last completed assessment roll. Upon the filing of such petition, the board of county commissioners shall set a time for hearing the same and shall cause notice thereof to be posted in at least three (3) separate public places within said district for at least two (2) weeks prior to the hearing, and which notice shall, also, be published for at least two (2) successive issues in a newspaper published in the county prior to such hearing. If upon such hearing the commissioners find such petition to be sufficient and that the district is not indebted in any amount beyond funds immediately available to extinguish all of its debts and obligations and that there is good reason for the dissolution of such district, the commissioners shall enter upon their minutes an order dissolving such district. Such order shall be filed, of record, and the dissolution shall be effective for all purposes six (6) months after the date of filing said order of dissolution, providing that at or before such time the board of trustees of said district certifies to the board of county commissioners that all debts and obligations of the district have been paid, discharged or irrevocably settled, together with legal proof thereof. Any assets of the district remaining after all debts and obligations of the district have been paid, discharged or irrevocably settled, shall become the property of the county.

History: En. Sec. 13, Ch. 155, L. 1953; **Amendments**
amd. Sec. 13, Ch. 257, L. 1969.

The 1969 amendment added the last sentence.

CHAPTER 44—METROPOLITAN SANITARY AND/OR STORM SEWER SYSTEMS

Section

16-4416. Rates, charges and rentals for services.

16-4416. Rates, charges and rentals for services. The board of county commissioners shall have full power and authority by ordinance or resolution to fix and establish just and equitable rates, charges and rentals for the services and benefits directly or indirectly afforded by any sanitary or storm sewer system operated, controlled, and under the jurisdiction of a metropolitan sanitary and/or storm sewer district formed under this chapter. Such rates, charges and rentals shall be as nearly as possible

equitable in proportion to the services and benefits rendered, and may take into consideration the quantity of sewage produced and its concentration and water pollution qualities in general and the cost of disposal of sewage and storm waters. The board of county commissioners shall have authority, by resolution and after public hearing, to fix and establish the sewer rates, charges and rentals at amounts sufficient in each year, not to exceed seven dollars (\$7) per unit user per year, to provide income and revenues adequate for the payment of the reasonable expense of operation and maintenance of the system; to fix and establish an additional charge not to exceed seven dollars (\$7) per unit user per year for the operation and maintenance of a sanitary and storm sewer system and of a sewage treatment plant; and to levy and to assess a tax upon the taxable valuation of each and every lot or parcel of land and improvements thereon in the district not in excess of two (2) mills on each dollar of taxable valuation to provide sufficient revenues for the reserve fund of the amounts necessary to meet the financial requirements of such fund as described in section 16-4417.

History: En. 16-4416 by Sec. 3, Ch. 165, L. 1965; amd. Sec. 1, Ch. 202, L. 1967; amd. Sec. 1, Ch. 209, L. 1969.

Amendments

The 1969 amendment, in the first sentence, substituted "operated, controlled, and under the jurisdiction of" for "construction in and for"; in the third sen-

tence, inserted "public" before "hearing," raised the maximum per unit user charge from \$5 per year to \$7, raised the maximum additional charge from \$3 to \$7, substituted "for the operation and maintenance * * * a sewage treatment plant" for "reasonable expense of operation and maintenance of a sewage treatment plant" and made minor changes in phraseology.

CHAPTER 45—COUNTY WATER AND SEWER DISTRICTS

Section

16-4522. Sixty per cent (60%) vote necessary.
16-4535. Elections may be combined.

16-4522. Sixty per cent (60%) vote necessary. If from such returns it appears that sixty per cent (60%) or more of the votes cast at such election were in favor of and assented to the incurring of such indebtedness, then the board of directors may, by resolution, at such time or times as it deems proper, provide for the form and execution of such bonds and for the issuance of any part thereof, and may sell or dispose of the bonds so issued at such times or in such manner as it may deem to be to the public interest.

History: En. Sec. 22, Ch. 242, L. 1957; amd. Sec. 1, Ch. 335, L. 1969.

Amendments

The 1969 amendment substituted "sixty per cent (60%) or more" for "more than two-thirds."

Effective Date

Section 2 of Ch. 335, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 13, 1969.

16-4535. Elections may be combined. The board of commissioners in its discretion may combine in one election the election on the formation of the district, the election of directors, and the election on incurring a bonded indebtedness, so that the electors of the district may vote on all of these matters on the same date and at the same time. If the elections

are combined the board of commissioners shall so declare by resolution containing the provisions required by 16-4517. Candidates for the office of director shall be nominated in the manner required by 16-4507. Whenever the elections are combined, notice of the election, the names of the candidates and the details concerning the bonded indebtedness may be given in the manner prescribed by 16-4505 and 16-4507 or either of them.

History: En. 16-4535 by Sec. 1, Ch. 109, L. 1969.

Effective Date

Section 2 of Ch. 109, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

Title of Act

An act allowing county water and sewer district elections to be combined.

REVISED CODES OF MONTANA

VOLUME 2

Part 2

1969 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 2 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 2
(PART 2) THROUGH VOLUME 447 PACIFIC
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NEW LAWS IN VOLUME 2 (Part 2)

For index see pocket supplement to Replacement Volume 9

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MONTANA REVISED CODES

TITLE 17—DAMAGES AND RELIEF

CHAPTER 2—COMPENSATORY RELIEF—DAMAGES—INTEREST—EXEMPLARY DAMAGES

17-201. (8659) Person suffering detriment may recover damages.

Disability Insurance Policy

Insured was entitled to sue insurance company for actual damages for default on policy requiring it to pay car installments upon insured's disability as well as

for exemplary damages since default was in violation of statute requiring prompt payment of claim. *State ex rel. Larson v. District Court, Eighth Judicial District*, 149 M 131, 423 P 2d 598.

17-204. (8662) Person entitled to recover damages may recover interest, etc.

Time Interest Commences Running

Interest commenced running upon filing of complaint against surety company on bond where no demand had been made on surety until filing of complaint; such interest was due notwithstanding surety's

contention that since damages were not certain until time of filing of judgment, it could not be charged with interest from time of filing of complaint. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.

17-208. (8666) Exemplary damages, etc.

Attractive Nuisance

In attractive nuisance case, parents of deceased child were not entitled to exemplary damages in absence of proof of willful disregard of duty or indifference on part of contractor which would permit inference of malice; exemplary damages are extraordinary in nature and are allowed as punishment where something more than mere negligence is alleged and proven. *Gagnier v. Curran Constr. Co.*, 151 M 468, 443 P 2d 894.

debtor's son for which debtor was not responsible and evidence showing bona fide intent of debtor to pay note was sufficient to warrant award of exemplary damages to debtor. *Security State Bank of Harlem v. Kittleson*, 149 M 183, 425 P 2d 72.

Insurance Policy Default

Insured was entitled to sue insurance company for actual damages for default on policy requiring it to pay car installments upon insured's disability as well as for exemplary damages since default was in violation of statute requiring prompt payment of claim. *State ex rel. Larson v. District Court, Eighth Judicial District*, 149 M 131, 423 P 2d 598.

Counterclaim

On counterclaim by debtor against bank suing on note of debtor, evidence showing that bank converted funds and property of debtor to satisfy obligations of

CHAPTER 3—MEASURE OF DAMAGES

17-301. (8667) Measure of damages for breach of contract.

Sale of Land

In computing damages for sale of land constituting constructive fraud in that representations of acreage exceeded actual acreage, buyer was not entitled to damages for loss of profits based on number of cows which total ranch would support

but was entitled to damages for missing acreage computed from contract value on per acre basis without distinction between deeded and leased land or fenced or open land. *Hardin v. Hill*, 149 M 68, 423 P 2d 309.

CHAPTER 4—DAMAGES FOR WRONGS

17-401. (8686) Breach of obligation other than contract.**Aggravation of Pre-existing Injury**

Measure of damages in tort action includes damages for aggravation of pre-existing condition, but injured party is not entitled to recover damages which would have resulted from his previous condition even without aggravation; however, where it was reasonable to suppose

that in absence of accident, intervertebral disc would have herniated within not more than two years, still injured party was entitled to damages resulting from hastening of back condition, including pain and suffering during additional period of disability reasonably caused by accident. *Kegel v. United States*, 289 F Supp 790.

CHAPTER 8—SPECIFIC RELIEF—PERFORMANCE OF OBLIGATIONS

17-801. (8714) In what cases compelled.**Inadequate Relief by Pecuniary Compensation**

Under principle that monetary damages are presumed inadequate as remedy in contract for purchase of land, purchaser was entitled to specific performance not-

withstanding seller's contention that presumption was rebutted by testimony of purchaser that he could ascertain damages if not allowed to obtain the property. *Brown v. Griffin*, 150 M 498, 436 P 2d 695.

17-804. (8717) Distinction between real and personal property.**Rebuttable Presumption**

Under principle that monetary damages are presumed inadequate as remedy in contract for purchase of land, purchaser was entitled to specific performance not-

withstanding seller's contention that presumption was rebutted by testimony of purchaser that he could ascertain damages if not allowed to obtain the property. *Brown v. Griffin*, 150 M 498, 436 P 2d 695.

TITLE 18—DEBTOR AND CREDITOR

Chapter

4. Debt adjusters, 18-401 to 18-403.

CHAPTER 1—DEBTOR AND CREDITOR—DEFINITIONS AND GENERAL PROVISIONS

18-104. (8601) Payments in preference.

Contingent Liability

Debtor's sale of property to pay all creditors except one did not violate statute in light of fact that excepted debt was

contingent liability which debtor could reasonably anticipate would not become due and owing. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.

CHAPTER 4—DEBT ADJUSTERS

Section

18-401. Definitions.

18-402. Prohibition—penalty.

18-403. Exemptions.

18-401. Definitions. As used in this act the following words and terms shall have the following meanings unless the context clearly requires a different meaning. The singular shall include the plural and the masculine gender the feminine gender.

(1) "Person" means an individual, corporation, partnership, trust, firm, association or other legal entity.

(2) "Debt adjusting" means the making of a contract, express or implied, with a debtor whereby the debtor agrees to pay a certain amount of money or other thing of value periodically to the person engaged in the debt-adjusting business who shall, for a consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon. The term includes debt adjustment, budget counseling, debt management or debt-pooling service or the holding of oneself out, by words of similar import, as providing services to debtors in the management of their debts and contracting with the debtor for a fee to (a) effect the adjustment, compromise, or discharge of any account, note, or other indebtedness, of the debtor, or (b) receive from the debtor and disperse to his creditors any money or other thing of value.

History: En. Sec. 1, Ch. 300, L. 1969.

adjusting when conducted for profit, making certain acts unlawful, and prescribing penalties therefor; excluding certain persons from the provisions of this act.

Title of Act

An act to prohibit the business of debt

18-402. Prohibition—penalty. No person shall engage in the business of debt adjusting. Whoever shall engage in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars (\$500), or be imprisoned not more than six (6) months, or both.

History: En. Sec. 2, Ch. 300, L. 1969.

18-403. Exemptions. This act shall not apply to:

- (1) Those situations involving debt adjusting incurred incidentally in the lawful practice of law in this state.
- (2) Banks and fiduciaries, as duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business.
- (3) Title insurers and abstract companies, while doing an escrow business.
- (4) Judicial officers or others acting under court orders.
- (5) Nonprofit or charitable corporations or associations engaged in debt adjusting.
- (6) Those situations involving debt adjusting incurred incidentally in connection with the lawful practice as a certified public accountant.
- (7) Bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments.
- (8) Employers for their employees.
- (9) Any person (other than a collection agency) whose maximum fees or charges for all services in adjusting the debtor's debts are ten per cent (10%) of the amounts as paid by the debtor.
- (10) Any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation for the services rendered in adjusting the debts.

History: En. Sec. 3, Ch. 300, L. 1969.

Effective Date

Section 4 of Ch. 300, Laws 1969 pro-

vided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

TITLE 19—DEFINITIONS AND GENERAL PROVISIONS

Chapter

1. Definitions and construction of terms—holidays—other general provisions, 19-103.1, 19-107, 19-123.

CHAPTER 1—DEFINITIONS AND CONSTRUCTION OF TERMS—HOLIDAYS— OTHER GENERAL PROVISIONS

Section

- 19-103.1. Printing defined.
- 19-107. Legal holidays and business days defined.
- 19-123. State gem stones.

19-103.1. Printing defined. As used in the constitution and laws of the state of Montana, printing is the act of reproducing a design on a surface by any process.

History: En. Sec. 1, Ch. 267, L. 1969. as an act of reproducing a design on a surface by any process.

Title of Act

An act to define printing in Montana

19-107. (10) Legal holidays and business days defined. The following are legal holidays in the state of Montana:

- (1) Each Sunday.
- (2) New Year's Day, January 1.
- (3) Lincoln's Birthday, February 12.
- (4) Washington's Birthday, the third Monday in February.
- (5) Memorial Day, the last Monday in May.
- (6) Independence Day, July 4.
- (7) Labor Day, the first Monday in September.
- (8) Columbus Day, the second Monday in October.
- (9) Veterans' Day, the fourth Monday in October.
- (10) Thanksgiving Day, the fourth Thursday in November.
- (11) Christmas Day, December 25.
- (12) State general election day.

If any of the above-enumerated holidays (except Sunday) fall upon a Sunday, the Monday following is a holiday. All other days are business days.

Whenever any bank in the state of Montana elects to remain closed and refrains from the transaction of business on Saturday, pursuant to authority for permissive closing on Saturdays by virtue of the laws of the state, legal holidays for such bank during the year of such election are hereby limited to the following holidays:

- (1) Each Sunday.
- (2) New Year's Day, January 1.
- (3) Memorial Day, the last Monday in May.
- (4) Independence Day, July 4.
- (5) Labor Day, the first Monday in September.

(6) Thanksgiving Day, the fourth Thursday in November.

(7) Christmas Day, December 25.

Any bank practicing Saturday closing in compliance with law may remain closed and refrain from the transaction of business on Saturdays, notwithstanding that a Saturday may coincide with a legal holiday other than one of the holidays designated above for banks practicing Saturday closing in compliance with law, and provided further that it shall be optional for any bank, whether practicing Saturday closing or not, to observe as a holiday and to be closed on any day upon which a general election is held throughout the state of Montana and on Veterans' Day, the fourth Monday in October, and on any local holiday which historically or traditionally or by proclamation of a local executive official or governing body is established as a day upon which businesses are generally closed in the community in which the bank is located.

History: Ap. p. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, 1921; re-en. Sec. 10, R. C. M. 1921; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. 1969. Cal. Pol. C. Secs. 10-11.

made Memorial Day the last Monday in May instead of May thirtieth, Columbus Day the second Monday in October instead of October twelfth, and Veterans' Day the fourth Monday in October instead of November eleventh.

Amendments

The 1969 amendment revised and reworded the section to enumerate the lists of legal and authorized bank holidays and

Effective Date

Section 2 of Ch. 89, Laws 1969 read "This act is effective January 1, 1971."

19-123. State gem stones. The sapphire and the Montana agate are the official Montana state gem stones.

History: En. Sec. 1, Ch. 20, L. 1969.

Montana agate the official Montana state gem stones.

Title of Act

An act naming the sapphire and the

TITLE 21—DIVORCE

CHAPTER 1—DISSOLUTION OF MARRIAGE—DIVORCE

21-138. (5770) Orders respecting custody of children.

Modification of Amount of Award

District court was free to modify original decree to provide for child-support payments which were lower than those set forth in separation agreement. *Gessell v. Jones*, 149 M 418, 427 P 2d 295.

TITLE 22—DOWER

Chapter

1. Dower, 22-108.

CHAPTER 1—DOWER

Section

22-108. Renunciation and form of.

22-108. (5820) Renunciation and form of. When a woman is entitled to an election under this chapter, she shall be deemed to have taken such devise, unless, within six months after the authentication or probate of the will, she shall deliver or transmit to the district court of the proper county a written renunciation, which may be in the following form, to wit: "I, A B, widow of C D, late of the county of _____, state of Montana, do hereby renounce and quit all claims to the benefit of any bequest or devise made to me by the last will and testament of my said deceased husband, which has been exhibited and proved according to law (or otherwise, as the case may be), and I do elect to take in lieu thereof my dower, or legal share of the estate of my said husband," which said letter of renunciation shall be filed in the office of the clerk of the district court, and shall operate as a complete bar against any claim which such widow may afterwards set up to any provision which may have been thus made for her in the will of any testator, in lieu of dower; and by thus renouncing all claims as aforesaid, such widow shall thereupon be entitled to dower in the lands or share in the personal estate of her husband.

History: En. Ch. 36, p. 38 et seq., L. 1866, March 21, 1866; this act set aside by act of Congress, March 2, 1867. This section en. Sec. 8, p. 65, L. 1876; omitted from Rev. Stat. 1879 and Comp. Stat. 1887; re-en. Sec. 235, Civ. C. 1895; re-en. Sec. 3715, Rev. C. 1907; re-en. Sec. 5820,

R. C. M. 1921; amd. Sec. 1, Ch. 150, L. 1969.

Amendments

The 1969 amendment shortened the time for renunciation from one year to six months.

TITLE 23—ELECTIONS

Chapter

1. Time of holding elections—proclamations, Repealed—Section 248, Chapter 368, Laws of 1969.
2. Publication of questions submitted to popular vote, Repealed—Section 248, Chapter 368, Laws of 1969.
3. Qualifications and privileges of electors, Repealed—Section 248, Chapter 368, Laws of 1969.
4. Election precincts, Repealed—Section 248, Chapter 368, Laws of 1969.
5. Registration of electors, Repealed—Section 248, Chapter 368, Laws of 1969.
6. Judges and clerks of elections, Repealed—Section 248, Chapter 368, Laws of 1969.
7. Election supplies, Repealed—Section 248, Chapter 368, Laws of 1969.
8. Nomination of candidates for special elections by convention or primary meetings or by electors, Repealed—Section 248, Chapter 368, Laws of 1969.
9. Party nominations by direct vote—the direct primary, Repealed—Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969.
10. Political parties, Repealed—Section 8, Chapter 266, Laws of 1955; Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969.
11. Ballots, preparation and form, Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969.
12. Conducting elections—the polls—voting and ballots, Repealed—Section 248, Chapter 368, Laws of 1969.
13. Voting by absent electors, Repealed—Section 248, Chapter 368, Laws of 1969.
14. Voting by absent electors in United States service, Repealed—Section 248, Chapter 368, Laws of 1969.
15. Registration of electors absent from county of their residence, Repealed—Section 248, Chapter 368, Laws of 1969.
16. Voting machines—conduct of election when used, Repealed—Section 248, Chapter 368, Laws of 1969.
17. Election returns, Repealed—Section 248, Chapter 368, Laws of 1969.
18. Canvass of election returns—results and certificates, Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969.
19. Failure of elections—proceedings on tie vote, Repealed—Section 248, Chapter 368, Laws of 1969.
20. Nonpartisan nomination and election of judges of supreme court and district courts, Repealed—Section 3, Chapter 20, Laws of 1959; Section 248, Chapter 368, Laws of 1969.
21. Presidential electors, how chosen—duties, Repealed—Section 248, Chapter 368, Laws of 1969.
22. Members of Congress—elections and vacancies, Repealed—Section 248, Chapter 368, Laws of 1969.
23. Recount of ballots—results, Repealed—Section 248, Chapter 368, Laws of 1969.
24. Conventions to ratify proposed amendments to constitution of the United States, Repealed—Section 248, Chapter 368, Laws of 1969.
25. Electronic voting systems, Repealed—Section 248, Chapter 368, Laws 1969.
26. Definitions and general provisions, 23-2601 to 23-2606.
27. Qualifications and privileges of electors, 23-2701 to 23-2705.
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29. Proclamations and publications, 23-2901 to 23-2904.
30. Registration of electors, 23-3001 to 23-3029.
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32. Judges and clerks of elections, 23-3201 to 23-3207.
33. Primary elections and nominations by certificate, 23-3301 to 23-3321.
34. Political parties, committeemen and committees, 23-3401 to 23-3407.
35. Election supplies and ballots, 23-3501 to 23-3517.
36. Conduct of elections—the polls—voting and ballots, 23-3601 to 23-3618.
37. Absentee voting and registration, 23-3701 to 23-3723.
38. Voting machines, 23-3801 to 23-3822.
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40. Canvass of votes—returns and certificates, 23-4001 to 23-4019.
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45. Nonpartisan nomination and election of judges, 23-4501 to 23-4511.
46. Conventions to ratify amendments to constitution of the United States, 23-4601 to 23-4611.

CHAPTER 1

TIME OF HOLDING ELECTIONS—PROCLAMATIONS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-101 to 23-106. (531 to 536) Repealed.

Repeal

Sections 23-101 to 23-106 (Secs. 1150, 1151, 1160 to 1163, Pol. C. 1895), relating

to the time of holding elections and election proclamations, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 2

PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-201, 23-202. (537.1, 538) Repealed.

Repeal

Sections 23-201 and 23-202 (Sec. 1, Ch. 130, L. 1919; Sec. 1, Ch. 62, L. 1927; Sec. 1, Ch. 104, L. 1945), relating to publication of proposed constitutional amend-

ments and questions to be submitted to the people of the county or municipality, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 3

QUALIFICATIONS AND PRIVILEGES OF ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-301 to 23-311. (539 to 544) Repealed.

Repeal

Sections 23-301 to 23-311 (Secs. 1180, 1181, 1183 to 1185, 1188, Pol. C. 1895; Sec. 1, Ch. 44, L. 1941; Secs. 1 to 4, Ch. 28, L. 1945; Sec. 1, Ch. 92, L. 1949; Sec.

1, Ch. 64, L. 1959), relating to the requirement for elections by ballot, qualifications of electors, privileges of electors, and the definition of "taxpayers," were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 4

ELECTION PRECINCTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-401 to 23-407. (545 to 551) Repealed.

Repeal

Sections 23-401 to 23-407 (Secs. 1243, 1244, Pol. C. 1895; Secs. 2 to 6, Ch. 113, L. 1911; Secs. 2 to 6, Ch. 74, L. 1913; Secs. 2 to 6, Ch. 122, L. 1915; Sec. 1, Ch.

25, L. 1929), relating to election precincts, ward boundaries, and designation of places for holding elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 5

REGISTRATION OF ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-501, 23-501.1, 23-502 to 23-534. (553 to 562, 566 to 586) Repealed.

Repeal

Sections 23-501, 23-501.1, 23-502 to 23-534 (Secs. 1, 7, 12, 17 to 24, 26, 29, 30, 32, 35 to 39, Ch. 113, L. 1911; Secs. 1, 7, 12, 15, 17 to 24, 26, 29, 30, 32, 35 to 40, Ch. 74, L. 1913; Secs. 1, 7 to 36, Ch. 122, L. 1915; Sec. 1, Ch. 38, L. 1917; Sec. 1, Ch. 29, L. 1919; Sec. 1, Ch. 58, L. 1919; Secs. 1 to 4, Ch. 97, L. 1919; Sec. 1, Ch. 235, L. 1921; Secs. 1, 2, Ch. 61, L. 1933; Sec. 1, Ch. 25, L. 1935; Sec. 1, Ch.

71, L. 1935; Sec. 1, Ch. 147, L. 1937; Secs. 1 to 6, Ch. 172, L. 1937; Sec. 1, Ch. 51, L. 1941; Sec. 1, Ch. 144, L. 1941; Secs. 1, 2, Ch. 177, L. 1943; Sec. 1, Ch. 167, L. 1945; Sec. 1, Ch. 83, L. 1953; Secs. 1, 2, Ch. 80, L. 1955; Secs. 1, 2, Ch. 18, L. 1959; Secs. 2 to 4, Ch. 64, L. 1959; Secs. 1 to 5, Ch. 98, L. 1965; Secs. 3, 4, Ch. 156, L. 1965; Secs. 1, 2, Ch. 139, L. 1967), relating to registration of electors, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 6

JUDGES AND CLERKS OF ELECTIONS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-601 to 23-604, 23-604.1, 23-604.2, 23-605 to 23-612. (587 to 597) Repealed.

Repeal

Sections 23-601 to 23-604, 23-604.1, 23-604.2, 23-605 to 23-612 (Secs. 6, 7, p. 461, Cod. Stat. 1871; Secs. 1173, 1260 to 1269, Pol. C. 1895; Sec. 1, Ch. 101, L. 1917; Secs. 1, 2, Ch. 43, L. 1923; Sec. 1, Ch. 61, L. 1937; Sec. 1, Ch. 85, L. 1941; Secs. 1, 2, Ch. 40, L. 1943; Sec. 1, Ch.

49, L. 1945; Sec. 2, Ch. 167, L. 1945; Sec. 1, Ch. 117, L. 1947; Sec. 1, Ch. 12, L. 1951; Sec. 1, Ch. 14, L. 1957; Sec. 1, Ch. 210, L. 1957; Secs. 1, 2, Ch. 99, L. 1961; Sec. 1, Ch. 46, L. 1963), relating to judges and clerks of elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 7

ELECTION SUPPLIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-701 to 23-713. (598, 600 to 611) Repealed.

Repeal

Sections 23-701 to 23-713 (Sec. 18, p. 463, Cod. Stat. 1871; Sec. 20, p. 140, L. 1889; Secs. 1174, 1270 to 1273, 1300, 1302, 1303, 1356, Pol. C. 1895; Sec. 1, Ch. 88, L. 1907; Secs. 1 to 4, Ch. 12, L. 1915;

Sec. 5, Ch. 64, L. 1959), relating to poll-books, ballots, ballot boxes, printed instructions to electors, return forms, and other election supplies, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 8

NOMINATION OF CANDIDATES FOR SPECIAL ELECTIONS BY CONVENTION OR PRIMARY MEETINGS OR BY ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-801 to 23-820. (612 to 618.1, 619 to 630) Repealed.

Repeal

Sections 23-801 to 23-820 (Secs. 1310 to 1317, 1319, 1320, 1322, 1330 to 1336,

Pol. C. 1895; Secs. 2 to 9, 11, 12, 19, pp. 135 to 138, 140, L. 1889; Secs. 1 to 3, pp. 115, 116, L. 1901; Sec. 1, Ch. 15, L. 1925; Sec. 1,

Ch. 58, L. 1925; Sec. 1, Ch. 64, L. 1925; Sec. 1, Ch. 28, L. 1933; Sec. 1, Ch. 104, L. 1943; Sec. 1, Ch. 105, L. 1943; Sec. 1, Ch. 26, L. 1945; Sec. 1, Ch. 259, L. 1947; Sec. 1, Ch. 160, L. 1949; Secs. 5, 6, Ch.

156, L. 1965; Sec. 1, Ch. 86, L. 1967; Sec. 3, Ch. 194, L. 1967), relating to nominations for special elections, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 9

PARTY NOMINATIONS BY DIRECT VOTE—THE DIRECT PRIMARY

(Repealed—Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969)

23-901 to 23-936. (631 to 641, 644 to 652, 654 to 663, 665 to 670) **Repealed.**

Repeal

Sections 23-901 to 23-936 (Secs. 1 to 10, 13 to 21, 23 to 29, 31 to 38, Initiative Measure Nov. 1912; Secs. 1, 3, Ch. 88, L. 1921; Sec. 1, Ch. 1, Ex. L. 1921; Secs. 1, 2, Ch. 133, L. 1923; Secs. 1, 2, Ch. 12, L. 1925; Sec. 1, Ch. 118, L. 1925; Sec. 1, Ch. 159, L. 1925; Sec. 1, Ch. 3, L. 1927; Sec. 1, Ch. 7, L. 1927; Sec. 1, Ch. 14, L. 1927; Sec. 1, Ch. 98, L. 1927; Sec. 1, Ch. 125, L. 1927; Sec. 1, Ch. 34, L. 1929; Sec. 1, Ch. 67, L. 1929; Sec. 1, Ch. 6, L. 1933; Sec. 1, Ch. 62, L. 1933; Sec. 1, Ch. 181, L. 1937; Sec. 1, Ch. 84, L. 1939;

Sec. 1, Ch. 27, L. 1945; Sec. 1, Ch. 34, L. 1945; Sec. 3, Ch. 167, L. 1945; Sec. 1, Ch. 75, L. 1949; Sec. 1, Ch. 64, L. 1951; Secs. 1, 2, Ch. 6, L. 1953; Sec. 1, Ch. 8, L. 1953; Sec. 12, Ch. 214, L. 1953; Sec. 1, Ch. 19, L. 1955; Sec. 2, Ch. 207, L. 1955; Secs. 1 to 3, Ch. 266, L. 1955; Sec. 6, Ch. 64, L. 1959; Sec. 1, Ch. 219, L. 1959; Secs. 1, 2, Ch. 274, L. 1959; Sec. 1, Ch. 38, L. 1961; Secs. 2, 7, Ch. 156, L. 1965; Sec. 1, Ch. 151, L. 1967; Secs. 4, 5, Ch. 194, L. 1967), relating to primary elections, were repealed by Sec. 11, Ch. 156, Laws 1965; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 10

POLITICAL PARTIES

(Repealed—Section 8, Chapter 266, Laws of 1955; Section 11, Chapter 156, Laws of 1965; Section 248, Chapter 368, Laws of 1969)

23-1001 to 23-1009. (673.1 to 673.8) **Repealed.**

Repeal

Sections 23-1001 to 23-1009 (Secs. 1 to 8, Ch. 126, L. 1927; Sec. 2, Ch. 64, L. 1951; Sec. 1, Ch. 55, L. 1953; Secs. 13 to 16, Ch. 214, L. 1953; Secs. 4 to 7, Ch.

266, L. 1955; Sec. 3, Ch. 274, L. 1959; Secs. 1, 8, Ch. 156, L. 1965), relating to political parties, were repealed by Sec. 8, Ch. 266, Laws 1955; Sec. 11, Ch. 156, Laws 1965; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 11

BALLOTS, PREPARATION AND FORM

(Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969)

23-1101 to 23-1117. (677 to 681, 683 to 687) **Repealed.**

Repeal

Sections 23-1101 to 23-1107 (Secs. 1, 17, pp. 135, 139, L. 1889; Secs. 1350 to 1355, Pol. C. 1895; Sec. 1354, p. 117, L. 1901; Secs. 2, 3, Ch. 88, L. 1907; Sec. 1, Ch. 16, L. 1925; Sec. 1, Ch. 203, L. 1937; Secs. 1, 2, Subds. A to F, Ch. 81, L. 1939; Sec. 1, Ch. 170, L. 1939; Sec. 1, Subds. A to

F, Ch. 141, L. 1947; Sec. 1, Subds. A to F, Ch. 79, L. 1949; Secs. 1 to 3, Ch. 72, L. 1953; Sec. 9, Ch. 156, L. 1965; Secs. 6, 7, Ch. 194, L. 1967), relating to form, printing and distribution of ballots, were repealed by Sec. 13, Ch. 194, Laws 1967; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 12

CONDUCTING ELECTIONS—THE POLLS—VOTING AND BALLOTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1201 to 23-1228. (688 to 714) Repealed.**Repeal**

Sections 23-1201 to 23-1228 (Sec. 11, p. 462, Cod. Stat. 1871; Secs. 22 to 27, pp. 141, 142, L. 1889; Secs. 1290 to 1292, 1358, 1360 to 1379, Pol. C. 1895; Secs. 1357 to 1359, 1361, 1364, pp. 118 to 120, L. 1901; Secs. 4, 5, Ch. 88, L. 1907; Sec. 26, Ch. 113, L. 1911; Sec. 26, Ch. 74, L. 1913; Sec. 26, Ch. 122, L. 1915; Sec. 1, Ch. 3, L. 1935; Sec. 1, Ch. 2, L. 1937;

Sec. 1, Ch. 111, L. 1937; Sec. 1, Ch. 207, L. 1955; Sec. 1, Ch. 32, L. 1959; Secs. 7, 8, Ch. 64, L. 1959; Sec. 1, Ch. 77, L. 1961), relating to voting time allowance, time of and proclamations on opening and closing of polls, furnishing and arrangement of polling places, methods and manner of voting, and challenges, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 13

VOTING BY ABSENT ELECTORS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1301 to 23-1302(2), 23-1303, 23-1303.1, 23-1304 to 23-1321. (715 to 735) Repealed.**Repeal**

Sections 23-1301 to 23-1302(2), 23-1303, 23-1303.1, 23-1304 to 23-1321 (Secs. 1 to 20, Ch. 110, L. 1915; Secs. 1 to 21, Ch. 155, L. 1917; Secs. 1 to 3, Ch. 151, L. 1923; Sec. 1, Ch. 32, L. 1941; Secs. 1 to 17, Ch. 234, L. 1943; Sec. 1, Ch. 60, L. 1953; Secs. 1, 2, Ch. 104, L. 1953; Sec. 1, Ch. 152, L.

1955; Secs. 3 to 5, Ch. 18, L. 1959; Secs. 9 to 11, Ch. 64, L. 1959; Secs. 1 to 3, Ch. 216, L. 1959; Secs. 1 to 3, Ch. 108, L. 1963; Secs. 1, 2, Ch. 124, L. 1963), relating to voting by absent or physically incapacitated electors were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 14

VOTING BY ABSENT ELECTORS IN UNITED STATES SERVICE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1401 to 23-1406. Repealed.**Repeal**

Sections 23-1401 to 23-1406 (Secs. 1 to 6, Ch. 99, L. 1943; Secs. 6 to 10, Ch.

18, L. 1959), relating to voting by absent electors in United States service, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 15

REGISTRATION OF ELECTORS ABSENT FROM
COUNTY OF THEIR RESIDENCE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1501 to 23-1503. Repealed.**Repeal**

Sections 23-1501 to 23-1503 (Secs. 1 to 3, Ch. 190, L. 1943), relating to registra-

tion of electors absent from county of residence, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 16

VOTING MACHINES—CONDUCT OF ELECTION WHEN USED

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1601 to 23-1608, 23-1608A, 23-1609 to 23-1618. (757 to 773) Repealed.**Repeal**

Sections 23-1601 to 23-1608, 23-1608A, 23-1609 to 23-1618 (Sees. 1 to 17, Ch. 168, L. 1907; Sec. 1, Ch. 6, L. 1909; Sees. 1 to 3, Ch. 99, L. 1909; Sees. 1 to 4, Ch. 246, L. 1921; Sec. 1, Ch. 31, L. 1935; Sees. 1 to 4, Ch. 19, L. 1943; Sec. 1, Ch. 26, L.

1947; Sees. 1, 2, Ch. 20, L. 1959; Sec. 16, Ch. 42, L. 1963; Sec. 1, Ch. 57, L. 1963; Sec. 10, Ch. 156, L. 1965), relating to examinations and specifications of voting readiness and the conduct of election when used, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 17

ELECTION RETURNS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1701 to 23-1715. (774 to 782, 784 to 789) Repealed.**Repeal**

Sections 23-1701 to 23-1715 (Sees. 22 to 25, p. 380, Bannaek Stat.; Sec. 30, p. 143, L. 1889; Sees. 1400 to 1408, 1410 to 1415, Pol. C. 1895; Sees. 6 to 10, Ch. 88, L. 1907; Sec. 1, Ch. 112, L. 1937; Sec. 1, Ch. 65, L. 1943; Sees. 1 to 3, Ch. 23,

L. 1945; Sees. 12 to 16, Ch. 64, L. 1959; Sec. 17, Ch. 42, L. 1963), relating to canvass of votes by judges of elections and the disposition and custody of returns were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 18

CANVASS OF ELECTION RETURNS—RESULTS AND CERTIFICATES

(Repealed—Section 13, Chapter 194, Laws of 1967; Section 248, Chapter 368, Laws of 1969)

23-1801 to 23-1819. (790 to 808) Repealed.**Repeal**

Sections 23-1801 to 23-1819 (Sees. 2 to 15, 17, 18, pp. 299 to 305, L. 1891; Sees. 1170, 1430 to 1444, 1448 to 1450, Pol. C. 1895; Sec. 1, Ch. 84, L. 1909; Sec. 1, Ch. 55, L. 1949; Sec. 1, Ch. 50, L. 1959; Sec. 1, Ch. 87, L. 1959; Sec. 16, Ch. 97, L. 1961; Sec. 18, Ch. 42, L. 1963;

Sees. 8, 9, Ch. 194, L. 1967), relating to the county and state canvass of returns, the issuance of certificates and commissions, and the duty of the secretary of state to print the election laws, were repealed by Sec. 13, Ch. 194, Laws 1967; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 19

FAILURE OF ELECTIONS—PROCEEDINGS ON TIE VOTE

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-1901 to 23-1904. (809 to 812) Repealed.**Repeal**

Sections 23-1901 to 23-1904 (Sec. 16, p. 305, L. 1891; Sees. 1171, 1445 to 1447, Pol. C. 1895; Sec. 10, Ch. 194, L. 1967),

relating to tie votes for representatives in Congress, state officers, and judicial officers, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 20

NONPARTISAN NOMINATION AND ELECTION OF JUDGES OF
SUPREME COURT AND DISTRICT COURTS(Repealed—Section 3, Chapter 20, Laws of 1959; Section 248, Chapter 368,
Laws of 1969)**23-2001 to 23-2014. (812.1 to 812.11, 812.13 to 812.15) Repealed.****Repeal**

Sections 23-2001 to 23-2014 (Secs. 1 to 11, 13 to 15, Ch. 182, L. 1935; Secs. 2 to 4, Ch. 229, L. 1961), relating to nonpar-

tisan nomination and election of district court and supreme court judges, were repealed by Sec. 3, Ch. 20, Laws 1959; Sec. 248, Ch. 368, Laws 1969.

CHAPTER 21

PRESIDENTIAL ELECTORS, HOW CHOSEN—DUTIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2101 to 23-2111. (813 to 823) Repealed.**Repeal**

Sections 23-2101 to 23-2111 (Secs. 1 to 5, 7, pp. 173, 174, L. 1891; Secs. 1460 to 1470, Pol. C. 1895; Sec. 1, Ch. 4, L.

1933; Sec. 1, Ch. 15, L. 1933; Sec. 1, Ch. 33, L. 1935), relating to election and duties of presidential electors, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 22

MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2201 to 23-2206. (824 to 828) Repealed.**Repeal**

Sections 23-2201 to 23-2206 (Secs. 2, 3, p. 306, L. 1891; Secs. 1480, 1481, 1490 to 1492, Pol. C. 1895; Secs. 1, 2, Ch. 126,

L. 1915; Sec. 1, Ch. 146, L. 1965), relating to elections and vacancies in office of members of Congress, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 23

RECOUNT OF BALLOTS—RESULTS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2301 to 23-2323. (828.1 to 828.7, 829) Repealed.**Repeal**

Sections 23-2301 to 23-2323 (Secs. 1 to 7, Ch. 27, L. 1935; Secs. 1 to 15, Ch.

42, L. 1963), relating to recounts of ballots, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 24

CONVENTIONS TO RATIFY PROPOSED AMENDMENTS TO
CONSTITUTION OF THE UNITED STATES

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2401 to 23-2411. (829.1 to 829.11) Repealed.**Repeal**

Sections 23-2401 to 23-2411 (Secs. 1 to 11, Ch. 188, L. 1933; Secs. 11, 12, Ch. 194, L. 1967), relating to conventions for ra-

tification of proposed amendments to the constitution of the United States, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 25

ELECTRONIC VOTING SYSTEMS

(Repealed—Section 248, Chapter 368, Laws of 1969)

23-2501 to 23-2507. Repealed.**Repeal**

Sections 23-2501 to 23-2507 (Secs. 1, 2, 4 to 8, Ch. 20, L. 1965; Secs. 1, 2, Ch. 220, L. 1967) relating to the use of electronic voting systems, were repealed by Sec. 248, Ch. 368, Laws 1969.

CHAPTER 26

DEFINITIONS AND GENERAL PROVISIONS

Section

- 23-2601. Definitions.
 23-2602. Election to be by ballot.
 23-2603. Determination of candidate elected.
 23-2604. General election, when to be held.
 23-2605. Time of opening and closing of polls.
 23-2606. Penalty for violation of act.

23-2601. Definitions. As used in this act, unless the context clearly indicates otherwise:

- (1) "Election" means a general, special, primary nominating, municipal election, or an election in a school district.
- (2) "General election" means an election held for the election of officers throughout the state at times specified by law.
- (3) "Special election" means an election called by the proper authorities to fill vacancies or to raise money.
- (4) "Vacancy" means an office which does not have an incumbent who has a right to exercise its functions and take its fees or emoluments.
- (5) "Primary" or "primary election" means a statutory procedure for nominating candidates to public office at the polls.
- (6) "Party" means any political organization which at the last preceding election for governor polled at least three per cent (3%) of the votes for governor.
- (7) "Taxpayer" means a person who has paid a tax on property assessed on a county or city assessment roll next preceding the election at which a question is to be submitted to the vote of the taxpayers.
- (8) "Registrar" means the county clerk and recorder and any regularly appointed deputy clerk and recorder.
- (9) "Commissioners" means the board of county commissioners.
- (10) "City" means any incorporated city or town.
- (11) "Council" means any municipal council or commission.

History: En. Sec. 1, Ch. 368, L. 1969.

Title of Act**Compiler's Note**

Chapter 368, Laws 1969 provided: "It is the intent of the legislative assembly that all nonamendatory sections of this bill be codified in Title 23, Revised Codes of Montana, 1947."

An act for the codification and general revision of the laws relating to the election laws of the state of Montana; repealing sections 23-101 through 23-106, 23-201 through 23-202, 23-301 through 23-311, 23-401 through 23-407, 23-501, 23-501.1, 23-502 through 23-534, 23-601 through

23-604, 23-604.1, 23-604.2, 23-605 through 23-612, 23-701 through 23-713, 23-801 through 23-820, 23-901 through 23-929, 23-931, 23-933 through 23-936, 23-1001, 23-1008 through 23-1009, 23-1101 through 23-1107, 23-1109 through 23-1117, 23-1201 through 23-1228, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1304 through 23-1321, 23-1401 through 23-1406, 23-1501 through 23-1503, 23-1601 through 23-1608, 23-1608A, 23-1609 through 23-1618, 23-

1701 through 23-1715, 23-1801 through 23-1808, 23-1812 through 23-1819, 23-1901 through 23-1904, 23-2001 through 23-2012, 23-2014, 23-2101 through 23-2111, 23-2201 through 2206, 23-2301 through 23-2323, 23-2401 through 23-2411, 23-2501 through 23-2507, R. C. M. 1947.

Cross-References

Election offenses and corrupt practices, sec. 94-1401 et seq.

DECISIONS UNDER FORMER LAW

"General Election"

A general election is one held for the election of officers throughout the state. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

"Special Election"

A special election is one held to supply a vacancy in a public office, or one in which is submitted to the electors a proposition to raise money for any public improvement. State ex rel. Rowe v. Kehoe, 49 M 582, 591, 144 P 162.

"Vacancy"

The word vacancy as applied to a public office has no technical meaning, and it is not to be taken in a strict technical sense in every case. It may be said that an office is vacant when it is empty and without an incumbent who has a right to exercise its functions and take its fees or emoluments even though the vacancy is not a corporal one. "An office without an incumbent is vacant." LaBorde v. McGrath 116 M 283, 292, 149 P 2d 913.

23-2602. Elections to be by ballot. All elections shall be by ballot.

History: En. Sec. 2, Ch. 368, L. 1969.

23-2603. Determination of candidate elected. The person receiving the highest number of votes for any office at an election is elected to that office.

History: En. Sec. 3, Ch. 368, L. 1969.

23-2604. General election, when to be held. A general biennial election shall be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November.

History: En. Sec. 4, Ch. 368, L. 1969.

Cross-References

Cities and towns, elections of officers, secs. 11-701 to 11-734.

Corrupt Practices Act, secs. 94-1427 to 94-1474.

Election law violations, sec. 94-1401 et seq.

Initiative and referendum, sec. 37-101 et seq.

23-2605. Time of opening and closing of polls. (1) Except as provided in subsection (2) of this section:

(a) The polls must be opened at 8 a. m. on the morning of election day, and must be kept open continuously until 8 p. m. of that day;

(b) In precincts having less than one hundred (100) registered electors, the polls must be opened at 1 p. m. and closed at 8 p. m. of that day;

(c) Whenever all registered electors in any precinct have voted, the polls shall be closed immediately.

(2) If a special election is held by a county, city, high school district, or school district on the question of incurring an indebtedness or making a special or additional levy for any purpose, the polls shall open at 12 noon and be kept open continuously until 8 p. m. However, the poll hours shall be as specified in subsection (1) of this section if the

election is held on the same day, at the same polling places, and with the same judges and clerks as a general, county, school, or city election.

History: En. Sec. 5, Ch. 368, L. 1969.

Cross-References

Airport bonds, sec. 1-804.
 Beer, local option elections, sec. 4-350 et seq.
 Cities and towns, bond elections, secs. 11-2301 to 11-2330.
 County bonds and warrants, secs. 16-2001 to 16-2050.

Local option elections, state Liquor Control Act, sec. 4-142 et seq.

Retail liquor licenses, local option election, secs. 4-431 to 4-437.

School bonds, secs. 75-3901 to 75-3944, 75-4112, 75-4113, 75-4115 to 75-4118, 75-4601 to 75-4606.

School taxation, secs. 75-3801 to 75-3805.

23-2606. Penalty for violation of act. Anyone who violates any provision of this act for which no other penalty is specified is guilty of a misdemeanor.

History: En. Sec. 247, Ch. 368, L. 1969.

Cross-References

Bribery at elections, penalty, sec. 94-1423.

Disclosing contents of ballot after marking, penalty, sec. 94-1414.

Electioneering by election officials, penalty, 94-1413.

False nomination certificate, penalty, sec. 94-1412.

CHAPTER 27

QUALIFICATIONS AND PRIVILEGES OF ELECTORS

Section

- 23-2701. Qualifications of voter.
- 23-2702. Qualifications of electors at elections on incurring state indebtedness.
- 23-2703. Elector who is registered in one county and listed on assessment roll of another county entitled to vote on state debt or tax levy—receipt—certificate—registrar's duties.
- 23-2704. Notice and closing of registration for elections on incurring of state indebtedness other than for refunding or levy of tax.
- 23-2705. Privilege from arrest.

23-2701. Qualifications of voter. (1) Except as provided in section 23-2702, every person, if registered as required by law, is entitled to vote at all general and special elections for all officers which are elective, and upon all questions submitted to the vote of the people if he has the following qualifications:

- (a) He must be twenty-one (21) years of age;
 - (b) He must have resided in the state one (1) year and in the county thirty (30) days immediately preceding the election at which he offers to vote;
 - (c) He must be a citizen of the United States.
- (2) No person convicted of a felony has the right to vote unless he has been pardoned.

(3) No person adjudicated insane has the right to vote unless he has been restored to capacity as provided by law.

History: En. Sec. 6, Ch. 368, L. 1969.

Voting for Deceased Candidate

The casting of a ballot at an election of public officers is an affirmative, not a negative, act—an act done with intention

of voting for someone; hence if it is the purpose of voters to defeat a certain candidate, that purpose can be accomplished only by voting for some person in opposition to him, and not by voting for a person who died some weeks before election

with the expectation that the vote cast for him would be counted as opposed to the person sought to be defeated; one who has died is no longer a person for whom,

under section 2, article IX of the constitution, a voter may cast his ballot. *State ex rel. Wolff v. Guerink*, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

23-2702. Qualifications of electors at elections on incurring state indebtedness. If an election is held on the question of incurring a state debt, issuing bonds or debentures by the state other than refunding bonds or debentures, or the levy of a state tax for any purpose, persons must meet the requirements of section 23-2701 to vote, be a taxpayer on property in the state, and be listed on the last completed assessment roll of a county for state, county, and school district taxes.

History: En. Sec. 7, Ch. 368, L. 1969.

23-2703. Elector who is registered in one county and listed on assessment roll of another county entitled to vote on state debt or tax levy—receipt—certificate—registrar's duties. (1) If an elector is registered in a county where his name does not appear on the last completed assessment roll but his name does appear on the last completed assessment roll of another county, he is entitled to vote on a state debt or tax levy in the precinct in which he is registered if he presents to the registrar of the county in which he is registered before close of registration:

(a) A receipt from the treasurer of the county in which he appears on the last assessment roll showing payment of the taxes, or,

(b) A certificate from the treasurer of that county certifying that he is assessed with property, but that the taxes have not yet been paid.

(2) The certificate must be dated, numbered, name the elector, describe the property assessed, show the amount of taxes, and be signed by the county treasurer. The treasurer must keep a duplicate on file.

(3) Whenever a certificate or receipt from the county treasurer is presented, the registrar shall:

(a) Enter the elector's name in the pollbook of electors entitled to vote on the question;

(b) Enter in the pollbook the date and number of the tax receipt or certificate and the county in which issued.

(4) An elector meeting these qualifications is entitled to a ballot.

History: En. Sec. 8, Ch. 368, L. 1969.

23-2704. Notice and closing of registration for elections on incurring of state indebtedness other than for refunding or levy of tax. (1) If the question of state indebtedness, issuance of bonds or debentures other than for refunding, or the levy of a tax for state purposes, is submitted at an election other than a general biennial election, the registrar of each county shall publish in the official county newspaper, a notice signed by him, stating that registration will close at noon on the fortieth (40th) day prior to the date of the election unless the act providing for the submission of the question fixes a different time for the giving of notice. The notice shall be published ten (10) days or more prior to the date when registration will be closed unless the act providing for submission of the question fixes a different time for closing registration.

(2) If the question is to be submitted at a general biennial election, notice and the closing of registration shall be governed by the laws applying to general biennial elections. The provisions of section 37-107, R. C. M. 1947 apply to the printing and distribution of copies of the proposed law.

History: En. Sec. 9, Ch. 368, L. 1969.

therefore it should have been placed upon a separate ballot, is waived if not raised before the election, State ex rel. Graham v. Board of Examiners, 125 M 419, 239 P 2d 283, 290.

Objection Waived

The objection that a measure creates a state debt, levy, or liability, and that

23-2705. Privilege from arrest. Electors are privileged from arrest during their attendance at elections and in going to and from voting places except in cases of treason, felony, or breach of the peace.

History: En. Sec. 10, Ch. 368, L. 1969.

Cross-Reference

Persons exempt from arrest, sec. 95-616.

CHAPTER 28

PUBLICATION OF QUESTIONS SUBMITTED TO POPULAR VOTE

Section

23-2801. Advertisement of questions to be submitted.

23-2802. Publication and printing of amendments to constitution.

23-2801. Advertisement of questions to be submitted. Questions to be submitted to the people of the county or city must be advertised by publication in at least one (1) newspaper within the county or city once a week for two (2) successive weeks. One (1) of the publications must be upon the last day the newspaper is issued before the election.

History: En. Sec. 11, Ch. 368, L. 1969.

23-2802. Publication and printing of amendments to constitution. If a proposed constitutional amendment or amendments are submitted to the people, the secretary of state shall:

(1) Have the proposed amendment or amendments published in full once a week in one (1) newspaper in each county (if such there be) for four (4) weeks prior to the next general biennial election;

(2) Have a pamphlet printed containing an exact copy of the proposed amendment or amendments, an exact copy of existing constitutional provisions to be revised, and the amendment or amendments in the form in which it or they will be printed on the official ballot. The printed pamphlets shall be distributed as provided in section 37-107, R. C. M. 1947.

History: En. Sec. 12, Ch. 368, L. 1969.

and constitutional measures to be prepared by attorney general, sec. 37-104.1.

Cross-Reference

Explanation of initiative, referendum

DECISIONS UNDER FORMER LAW

Referendums

Legislature, by repealing section 537, R. C. M. 1935 and leaving in effect section requiring publication of proposed constitutional amendments, indicated its intent to dispense with publication prior

to general election of legislative acts referred to the people by the legislature, or the governor's proclamation that such act would be voted upon at such election. Nordquist v. Ford, 112 M 278, 283, 114 P 2d 1071.

CHAPTER 29

PROCLAMATIONS AND PUBLICATIONS

Section

- 23-2901. Election proclamation by the governor—contents.
- 23-2902. Publication and posting by county commissioners.
- 23-2903. Election proclamation by county commissioners.
- 23-2904. Copies of election laws to be furnished registrar—registrar to distribute to precincts.

23-2901. Election proclamation by the governor—contents. Sixty (60) days or more before a general election, the governor shall issue an election proclamation and transmit a copy to each board of county commissioners. The proclamation shall contain:

- (1) A statement of the time of the election and the offices to be filled;
- (2) An offer of rewards stating: "There is a reward of one hundred dollars (\$100) for the arrest and conviction of any person violating any of the provisions of sections 94-1401 through 94-1424, R. C. M. 1947. Rewards will be paid until the total amount expended reaches the sum of five thousand dollars (\$5,000).

History: En. Sec. 13, Ch. 368, L. 1969.

Office Not Mentioned

The governor issued his proclamation giving notice of a general election and omitted therefrom the mention of an election of three judges for the second judicial district, and called for the election of two judges. Upon mandamus proceedings against the governor, the relator claimed that three judges should have been mentioned in the proclamation, and that he was elected and entitled to receive from the governor a commission as judge. As it failed to appear that the electors voted for more than two candidates for judgeships, the petition was dismissed. State ex rel. Breen v. Toole, 32 M 4, 8, 79 P 403.

Sufficiency of Notice

A statement in the proclamation of the

governor giving notice of a general election, that among other officers there was to be elected "also a district judge, in any judicial district where a vacancy may exist," was not such a notice of the necessity of filling a vacancy by election. State ex rel. Patterson v. Lentz, 50 M 322, 343, 146 P 932.

The governor's proclamation should state the offices to be filled, especially where a state office, such as a judgeship, held by his appointee, is to be filled; but, if the people have actual notice that a judge is to be elected and indicate their choice, no insufficiency of notice, in the governor's proclamation, of a vacancy in that office, in any particular district, or other informality in the election, will suffice to defeat their will, as expressed by their votes. State ex rel. Patterson v. Lentz, 50 M 322, 343, 146 P 932.

23-2902. Publication and posting by county commissioners. When a proclamation prescribed by section 23-2901 is received, the commissioners shall have a copy published in a newspaper published in the county if a newspaper is published therein, otherwise in a newspaper of general circulation therein, and shall post a copy ten (10) days or more before the election at each polling place.

History: En. Sec. 14, Ch. 368, L. 1969.

23-2903. Election proclamation by county commissioners. When a special election is ordered by the commissioners, they must issue an election proclamation containing the statement contained in 23-2901 (1). The statement must be published and posted in the same manner as a proclamation issued by the governor.

History: En. Sec. 15, Ch. 368, L. 1969.

Notice Not Proclamation

The notice of election does not take the place of the election proclamation. Evers v. Hudson, 36 M 135, 154, 92 P 462.

Public Improvements

Prior section had no reference to elections held for raising money for public improvements. The power conferred in this behalf is exercised under special provisions

on the subject, found in that part of the codes relating to county government. State ex rel. Rowe v. Kehoe, 49 M 582, 592, 144 P 162.

Vacancies

In case of vacancies in county offices, boards of county commissioners have the power, and it is their duty, to call and provide for the holding of special elections to fill them. State ex rel. Rowe v. Kehoe, 49 M 582, 592, 144 P 162.

23-2904. Copies of election laws to be furnished registrar—registrar to distribute to precincts. The secretary of state shall publish copies of the election laws and laws which relate to elections. He shall transmit sufficient copies to each registrar. The registrar shall furnish each election precinct in his county with two (2) copies.

History: En. Sec. 16, Ch. 368, L. 1969.

CHAPTER 30

REGISTRATION OF ELECTORS

Section

- 23-3001. Highway patrol to submit new-voter lists to major political parties.
- 23-3002. County clerk as county registrar.
- 23-3003. Notaries public as deputy registrars—appointment of additional deputies—qualifications—duties.
- 23-3004. Registry book and card index.
- 23-3005. Hours of registration—registration cards.
- 23-3006. Method of registering—absent electors in the United States service—felony provisions.
- 23-3007. Registration of infirm elector at his residence.
- 23-3008. Procedure when prospective voter not qualified at time of registration—United States citizenship necessary.
- 23-3009. Transferring registration to another precinct.
- 23-3010. Procedure for transferring registry.
- 23-3011. Inquiry as to previous registration—procedure.
- 23-3012. Lists of registered electors—precinct register—indication of taxpayer electors.
- 23-3013. Cancellation of registry for failure to vote—reregistration—cancellation of registry of elector in United States service.
- 23-3014. Cancellation of registry for other reasons—reregistration.
- 23-3015. Challenges prior to election—registrar's duties—challenges on election day—election judges' duties.
- 23-3016. Close of registration—procedure.
- 23-3017. Registration while registry closed preceding election.
- 23-3018. Name on precinct register prima facie evidence of right to vote—elector's identity—election judges' duties as to precinct register.
- 23-3019. Joinder of parties in proceedings to compel registrar to enter name in precinct register.
- 23-3020. Erroneous omission of name from precinct register—Certificate.
- 23-3021. Registration by naturalized citizen.
- 23-3022. Residence, rules for determining.
- 23-3023. Printing of list of electors shown on precinct registers.
- 23-3024. Preparation of precinct register.
- 23-3025. Attempting to vote at another polling place after vote has been rejected a misdemeanor.
- 23-3026. Commissioners to provide registrar with sufficient help.
- 23-3027. Charges to city or school district—warrant—when no precinct registers required.
- 23-3028. Copies of precinct registers available to any person upon written request—charge.
- 23-3029. Violations of act, penalty for.

23-3001. Highway patrol to submit new-voter lists to major political parties. No later than January 31 in any year in which a general election is held, the Montana highway patrol shall submit to the chairman of each major political party of the state, a list prepared from its driver license registration files, showing names and addresses of all persons who have reached voting age since the last general election or who will reach voting age before the date of the general election. No official of the Montana highway patrol shall be responsible for any honest error or omission in preparing the lists.

History: En. Sec. 17, Ch. 368, L. 1969.

23-3002. County clerk as county registrar. (1) Each county clerk and recorder is ex officio county registrar. He shall:

(a) Serve without extra pay or compensation;

(b) Have custody of registration books, cards, and other records provided for by this act.

(2) The official register of electors is an official record of the county clerk and recorder.

History: En. Sec. 21, Ch. 368, L. 1969.

23-3003. Notaries public as deputy registrars—appointment of additional deputies—qualifications—duties. (1) All notaries public are deputy registrars in the county in which they reside. They may register electors residing in any precinct within the county.

(2) The commissioners shall appoint two (2) deputy registrars who are not notaries public, one (1) from each of the two (2) major political parties, for each precinct in the county from lists of persons recommended by the political parties. If the parties fail to submit lists, the commissioners shall appoint deputy registrars without recommendations from the parties. A deputy registrar shall:

(a) Be a qualified taxpaying resident elector in the precinct for which he is appointed;

(b) Register electors residing in any precinct in the county.

(3) Not less than three (3) days after a registration card is filled out, deputy registrars shall forward the card to the registrar.

History: En. Sec. 22, Ch. 368, L. 1969.

23-3004. Registry book and card index. The registrars shall keep an official register in a manner which each registrar deems the most efficient. A card index shall be kept by the registrar and shall at all times be in the custody of the registrar. The form and information recorded in the registry book and on the registry cards shall be designated by the secretary of state.

History: En. Sec. 23, Ch. 368, L. 1969.

23-3005. Hours of registration — registration cards. (1) The registrar's office shall be open for voter registration from 8 a. m. until 5 p. m. on all regular working days except legal holidays as defined by section 19-

107, R. C. M. 1947, except that the registrar's office shall be kept open on election day during the hours when the polls are open.

(2) Registration cards shall be numbered consecutively in order of receipt.

(3) The registrar shall classify registration cards by precinct and arrange the cards for each precinct in alphabetical order.

(4) The cards for each precinct shall be kept in a separate file.

(5) Immediately after filling out a registration card, the registrar shall enter the information in the official register of the county in the proper precinct.

History: En. Sec. 24, Ch. 368, L. 1969.

23-3006. Method of registering—absent electors in the United States service—felony provisions. (1) An elector may register by appearing before the registrar or deputy registrar in the county in which he resides and by:

(a) Answering any questions asked by the registrar concerning items of information called for by registry cards;

(b) Signing and verifying or affirming the affidavit or affidavits on the back of the card.

(2) Any elector in the United States service who is absent from the state and the county of which he is a resident may register by:

(a) Mailing the registry card filled out and signed under oath to the registrar, or

(b) Mailing the federal post card application filled out and signed under oath to the registrar.

(3) A person is guilty of a felony and upon conviction shall be imprisoned in the state prison for not less than one (1) nor more than three (3) years, if:

(a) He falsely personates another and causes the person so personated to be registered; or,

(b) Falsely represents his name or other information required by registration to any registrar or deputy registrar and causes his name to be registered; or,

(c) Causes any name to be placed upon the registry lists other than in the manner provided by this act.

History: En. Sec. 25, Ch. 368, L. 1969.

23-3007. Registration of infirm elector at his residence. (1) If an elector is unable to appear before the registrar or a deputy registrar because of physical infirmity, he may send written notice to the registrar or to a deputy registrar asking that his registration be made at his residence.

(2) No person is entitled to receive reimbursement for expenses incurred in complying with this section.

History: En. Sec. 26, Ch. 368, L. 1969.

23-3008. Procedure when prospective voter not qualified at time of registration—United States citizenship necessary. (1) A person who is

not eligible to register because of residence requirements but who will be eligible on or before election day, may register with the registrar if he answers the questions of the registrar and it appears that he will become qualified to vote by election day.

(2) A person shall not be permitted to register until he attains United States citizenship.

History: En. Sec. 27, Ch. 368, L. 1969.

23-3009. Transferring registration to another precinct. If an elector changes his residence, he may transfer his registration to the new precinct by:

(1) Executing in person a new registry card before a deputy registrar of the new precinct, and the deputy registrar shall not receive compensation for this service, or

(2) Making a request in writing to the registrar in a form prescribed by the secretary of state.

History: En. Sec. 28, Ch. 368, L. 1969.

23-3010. Procedure for transferring registry. (1) When a request to transfer registry is received, the registrar shall compare the elector's signature on the request with his signature on the registry card and may question the elector on any information shown on the registry card.

(2) If the registrar is satisfied, he shall endorse on the registry card the date of the transfer and the precinct to which transferred.

(3) The registrar shall file the registry card in the register of the precinct of the elector's residence, or in the register of the precinct of transfer, and transfer the elector's name to the proper precinct in the register.

(4) Where the elector changes his place of registration as provided in section 23-3009 (1), the registrar shall file the new card in the register of the precinct of the elector's present residence and transfer the elector's name to the proper precinct in the register. The old registration card shall be marked "canceled" and placed in the "canceled file."

History: En. Sec. 29, Ch. 368, L. 1969.

23-3011. Inquiry as to previous registration—procedure. (1) The registrar shall question each person registering to ascertain whether he has previously registered in this state. If the person has previously registered, the registrar shall enter his name in a separate file which is indexed by counties. Cards for this purpose shall be in the form prescribed by the secretary of state.

(2) Not more than three (3) days after closing the registration books, the registrar shall forward the cards to the registrar where the applicant previously voted by registered or certified mail. The delivery receipt shall be kept on file with other election records.

(3) Upon receiving notice to cancel the registration of an elector, the registrar shall immediately draw red lines through the elector's name in the register and on the registration card.

History: En. Sec. 30, Ch. 368, L. 1969.

23-3012. Lists of registered electors—precinct register—indication of taxpayer electors. (1) Immediately after registration is closed, the registrar shall prepare lists of all registered electors. He shall also prepare a precinct register for each precinct and deliver it to the judges of election prior to the opening of the polls.

(2) The registrar shall stamp "taxpayer" beside the name of an elector who is a taxpayer to show he is qualified to vote in an election for the incurring of a state debt, issuance of bonds or debentures by the state, or the levying of a state tax. No other evidence is necessary to show that the elector is a taxpayer.

History: En. Sec. 31, Ch. 368, L. 1969.

23-3013. Cancellation of registry for failure to vote—reregistration—cancellation of registry of elector in United States service. (1) Except as provided in subsection (3) of this section, immediately after every general biennial election, the registrar shall:

(a) Compare the electors who have voted in each precinct, as shown by the official pollbooks, with the official register of each precinct;

(b) Remove the registry cards of all electors who failed to vote, mark each card "canceled," and place canceled cards for the entire county in alphabetical order in the "canceled file";

(c) Notify each elector in writing before the thirty-first day after cancellation by sending notice to his post-office address as shown on the election records.

(2) An elector whose card is removed and canceled may register in the same manner as his original registration was made.

(3) The registration of an elector in the United States service may be canceled upon failure to vote in the previous two (2) general elections.

History: En. Sec. 32, Ch. 368, L. 1969.

23-3014. Cancellation of registry for other reasons—reregistration.

(1) The registrar shall cancel any registration card:

(a) At the written request of the person registered;

(b) When a certificate of the death of any elector is filed;

(c) Within forty-five (45) days prior to the closing of registration three (3) qualified registered electors residing within the precinct may challenge an elector by filing affidavits giving the name of the challenged elector, his registry number, his residence, and stating of the personal knowledge of the affiant the person registered does not reside at the place designated on his registration card;

(d) When the insanity of the elector is legally established;

(e) If a certified copy of a final judgment of conviction of any elector of a felony is filed;

(f) If a certified copy of a court order directing the cancellation is filed with the registrar.

(2) Within thirty (30) days after registration has been canceled, the registrar shall send written notice to the elector at the address shown on

the registration card. If a person proves to the registrar that he is qualified, he may reregister.

History: En. Sec. 33, Ch. 368, L. 1969.

23-3015. Challenges prior to election—registrar's duties—challenges on election day—election judges' duties. (1) An elector may challenge the qualifications of another elector any time not later than twenty (20) days prior to an election. The challenge must:

- (a) Be filed with the registrar and be signed by the elector;
- (b) Be verified by the affidavit of the elector that the elector designated is not entitled to vote;
- (c) State the grounds of the challenge, objection, and disqualification;
- (d) Notify the elector within five (5) days by registered United States mail that his qualifications as an elector have been challenged.

(2) The registrar shall:

- (a) File the affidavit of challenge in his office;
- (b) Deliver a correct copy of the affidavit to the judges of election together with a copy of the precinct registers, check lists, and other documents;
- (c) Write opposite the name of any person whose qualifications are challenged the words, "to be challenged."

(3) An elector's right to vote may also be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge.

(4) The election judges shall:

- (a) Test the qualifications of the elector challenged under oath if he applies to vote;
- (b) Compare the answers of the elector with the entries in the precinct register books;
- (c) Not permit him to vote if the elector is found to be disqualified because the answers given do not correspond to the entry in the precinct registers, or the elector is disqualified for any cause under the law, or he refuses to take an oath or affirmation as to his qualifications.

(5) The election judges may require the challenged elector to produce one (1) or more elector of the county to be examined under oath as to the qualifications of the challenged elector, and may also request assistance from the county attorney and the registrar in determining the elector's qualifications.

History: En. Sec. 34, Ch. 368, L. 1969.

Date for Holding Election

Under prior section, a period of not less

than sixty days was required to lapse between time an election was called and time it was held. State ex rel. Eagye v. Bawden, 51 M 357, 361, 152 P 761.

23-3016. Close of registration—procedure. (1) The registrar shall:

- (a) Close all registration for forty (40) days before any election;
- (b) Immediately after closing registration send the secretary of state a certificate showing the number of voters registered in each precinct in a county;

(c) Twenty (20) days before the closing, publish notice in a newspaper of general circulation in the county specifying the day registration will close and post the notice in each precinct. The published notice shall continue for a period of twenty (20) days.

(2) The notice shall state that electors may register for the ensuing election by appearing before the registrar or before any deputy registrar as provided by law.

History: En. Sec. 35, Ch. 368, L. 1969.

23-3017. Registration while registry closed preceding election. During the time when the registry is closed preceding any election, a person may register and the registrar shall keep his registry card in a separate file until the official register is again open. At that time, all cards in the temporary file shall be placed in their proper position in the official register.

History: En. Sec. 36, Ch. 368, L. 1969.

23-3018. Name on precinct register prima facie evidence of right to vote—elector's identity—election judges' duties as to precinct register.

(1) A person shall not vote at an election mentioned in this act unless his name appears on election day in the copy of the official precinct register furnished by the registrar to the election judges. The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote.

(2) If the election judges have good reason to believe, or if they are informed by a qualified elector that the person offering to vote is not the person registered in that name, he shall not be allowed to vote until he has proved his identity by the oath of two (2) reputable electors of the precinct in which he is registered.

(3) The election judges in each precinct at every general or special election in a precinct register certified to them by the registrar shall:

- (a) Mark a cross (X) upon the line opposite the name of the elector;
- (b) Require the elector to sign his name upon one of the precinct registers;

(c) Require an elector, who is not able to sign his name, to produce two (2) electors who shall make an affidavit before the election judges in a form prescribed by the secretary of state. One of the election judges shall write on the affidavit the elector's name, note his inability to sign, and the names of the electors making affidavits. The affidavits shall be returned to the registrar with the other election records.

History: En. Sec. 37, Ch. 368, L. 1969.

Failure To Sign

Failure of the election judges of a precinct to require the electors to sign the registry books before voting at a pri-

mary election was the fault of the judges and not of the electors, and therefore their votes were legal and properly counted. Thompson v. Chapin, 64 M 376, 383, 209 P 1060.

23-3019. Joinder of parties in proceedings to compel registrar to enter name in precinct register. In any action or proceeding instituted in a district court to compel the registrar to enter the name of any elector in the precinct register, as many persons may be joined as plaintiffs for

cause of action and as many persons as there are causes of action may be joined as defendants.

History: En. Sec. 38, Ch. 368, L. 1969.

23-3020. Erroneous omission of name from precinct register—certificate.

(1) An elector whose name is erroneously omitted from a precinct register or other election register may secure from the registrar a certificate of the error stating the precinct in which he is entitled to vote and present the certificate to the election judges which will entitle him to vote.

(2) The certificate shall be marked "voted" by the election judges and returned by them with the precinct register.

History: En. Sec. 39, Ch. 368, L. 1969.

23-3021. Registration by naturalized citizen. When a naturalized citizen applies for registration, he must produce a certificate of naturalization or a certified copy upon which the registrar must enter the date and county where presented. The registrar must also enter the applicant's name.

History: En. Sec. 40, Ch. 368, L. 1969.

23-3022. Residence, rules for determining. For registration or voting, the residence of any person shall be determined by the following rules as far as they are applicable.

(1) The residence of a person is where his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.

(2) A person may not gain or lose a residence while employed in the service of the United States or of this state, while a student at any institution of learning, while kept involuntarily at any public institution not necessarily at public expense, while confined in any public prison, or while residing on a military reservation.

(3) A person in the armed forces of the United States may not become a resident in consequence of being stationed at a military facility in the state. A person may not acquire a residence by reason of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) A person does not lose his residence if he goes into another state, or other district of this state, for temporary purposes with the intention of returning unless he exercises the election franchise in the other state or district.

(5) A person may not gain a residence in a county if he comes in for temporary purposes without the intention of making that county his home.

(6) If a person moves to another state with the intention of making it his residence, he loses his residence in this state.

(7) If a person moves to another state with the intention of residing there for an indefinite time, he loses his residence in this state even though he intends to return to this state at some future period.

(8) The place where a man's family resides is presumed his place of residence. However, a man who takes up or continues his residence at a

place other than where his family resided with the intention of remaining, is a resident of the place where he resides.

(9) A change of residence can only be made by the act of removal joined with intent to remain in another place. There can only be one residence.

(10) The term of residence must be computed by including the day of election.

History: En. Sec. 41, Ch. 368, L. 1969.

Acts and Intent of Voter

The residence of a voter is to be determined from his acts and intent; but this fact, like any other fact involved in a civil action or proceeding, may be established by circumstantial evidence, and any declarations of the voter touching the subject, if a part of the *res gestae*, or any declarations in disparagement of his right to vote, if made at or before the election, may be received in evidence. *Sommers v. Gould*, 53 M 538, 544, 165 P 599.

Inapplicable to Licensing of Automobiles

Section prescribing the conditions determining the right to vote with respect to residence of the voter had no bearing upon the situs of one's property (an automobile) or the ownership thereof for purpose of taxation, or licensing. *Valley County v. Thomas*, 109 M 345, 386, 97 P 2d 345.

Presumption

Predecessor to subdivision (8) was held to be in reality a rule of evidence. *Carwile v. Jones*, 38 M 590, 602, 101 P 153.

23-3023. Printing of list of electors shown on precinct registers. (1)

The registrar shall have a list printed of all registered electors shown on the precinct registers of the county, city, or first class school district ten (10) days or more preceding any election.

(2) The list shall show the name of the elector in full, the number and street of his residence if he resides within a city, his post-office address if he resides outside a city, and the registry number.

(3) Ten (10) days or more before any election, a copy of the list of registered voters shall be posted in each precinct. Sufficient copies of the lists shall be retained by the registrar and furnished to an elector upon request.

(4) If no declarations of nomination have been filed forty (40) days before a primary election for city offices, the city clerk shall immediately notify the registrar in writing and the list of registered electors for the city shall not be printed or posted.

(5) The list of registered voters prepared for a primary election may be posted and used for the general election only if a supplemental list giving the names of electors who have registered after the first list was prepared is printed and posted.

(6) The expense of printing this list shall be paid by the county, city, or school district, in which the election is to be held.

History: En. Sec. 42, Ch. 368, L. 1969.

23-3024. Preparation of precinct register. After the closing of the official register and before the election, the registrar shall:

(1) Prepare a "precinct register" for each precinct for use by clerks and election judges;

(2) List the names of electors in alphabetical divisions;

(3) Show all information from the registry card of each elector, except the oath of the elector;

(4) Deliver a certified copy of the precinct register to the election judges prior to the opening of the polls;

(5) Combine into one (1) precinct register the names of all electors in the several precincts where the precincts in city elections, or elections in school districts of the first class, include more than one (1) county precinct.

(6) If no declarations of nomination have been filed forty (40) days before a primary election for city offices, the city clerk shall immediately notify the registrar in writing, and the precinct register or registers shall not be prepared.

History: En. Sec. 43, Ch. 368, L. 1969.

23-3025. Attempting to vote at another polling place after vote has been rejected a misdemeanor. A person whose vote has been rejected who offers to vote at the same election at any other polling place is guilty of a misdemeanor.

History: En. Sec. 44, Ch. 368, L. 1969

23-3026. Commissioners to provide registrar with sufficient help. The commissioners shall provide the registrar with sufficient help for the duties imposed by this act. The cost of stationery, printing, publishing and posting are a proper charge against the county.

History: En. Sec. 45, Ch. 368, L. 1969.

23-3027. Charges to city or school district—warrant—when no precinct registers required. (1) For each name entered on a precinct register prepared for a city or first class school district, the registrar shall charge the city or school district three cents (\$.03). He shall also charge the actual expense incurred in printing and posting the lists of electors, publishing notice, and other expenses incurred on account of the city or school district.

(2) The council or board of school trustees shall order a warrant drawn for the expenses specified in subsection (1) of this section within thirty (30) days after notification of the charges.

(3) If no general city election is required, the registrar shall not prepare precinct registers.

(4) If there are only as many candidates nominated as there are vacancies on a first class school district board of trustees, the registrar shall not prepare precinct registers.

(5) Within two (2) days after nominations are legally closed, the city clerk or clerk of a first class school district shall notify the registrar when no precinct registers are required.

History: En. Sec. 46, Ch. 368, L. 1969.

23-3028. Copies of precinct registers available to any person upon written request—charge. Upon written request, the registrar shall furnish

any person a copy of the official precinct registers. Upon delivery, the registrar shall collect a charge of five cents (\$.05) for each name entered in the official register.

History: En. Sec. 47, Ch. 368, L. 1969.

23-3029. Violations of act, penalty for. (1) Any person or any officer of a county, city, or school district required to perform duties under this act who willfully or knowingly fails to do so shall be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1000), or be imprisoned in the county jail for not less than three (3) months nor more than one (1) year. If an officer is involved, the judge of the district court shall also remove him from office.

(2) Any person who makes false answers; violates or attempts to violate any of the provisions of this act; mutilates, secretes, destroys, or alters election records except as provided by law; or knowingly encourages another to violate the act; or any public officer or other person upon whom any duty is imposed by this act who willfully neglects that duty or willfully performs the duty in a way which hinders the purposes of this act is guilty of a felony. Upon conviction he shall be imprisoned for not less than one (1) year nor more than fourteen (14) years. If a public officer, he shall also forfeit his office and never be qualified to hold public office again[,] either elective or appointive.

History: En. Sec. 48, Ch. 368, L. 1969.

CHAPTER 31

ELECTION PRECINCTS

Section

- 23-3101. Establishment of election precincts—change of boundaries—certification of changes—designation—map—boundary to conform to wards or school districts.
- 23-3102. Ward boundaries, certification of changes—map.
- 23-3103. Designation of polling place.

23-3101. Establishment of election precincts—change of boundaries—certification of changes—designation—map—boundary to conform to wards or school districts. (1) The territorial unit for elections is the election precinct.

(2) The commissioners of each county shall establish a convenient number of election precincts equalizing the number of electors in each precinct as nearly as possible.

(3) The commissioners may change the boundaries of precincts but not between January 1 and December 1 in any year during which a general biennial election will be held.

(a) All changes must be certified to the registrar three (3) days or less after the change is made.

(b) All election precincts shall be designated by numbers, names, or both.

(c) Not more than ten (10) days after an order of the commissioners has established or changed the boundaries of an election precinct, the

commissioners shall cause to be prepared and delivered a map to the registrar showing the borders of all precincts and school districts within the county.

(4) The boundaries of election precincts must conform to the wards of cities of the first, second, and third class and the boundaries of first class school districts only.

(5) A ward or school district may be divided into two (2) or more precincts, and a precinct may be divided into two (2) or more polling places.

(6) In cities not of the first, second, or third class, precincts may include two (2) or more wards, or may comprise territory included by one (1) or more wards together with contiguous territory lying outside the incorporated limits of the cities.

History: En. Sec. 18, Ch. 368, L. 1969.

23-3102. Ward boundaries, certification of changes—map. Not more than ten (10) days after ward boundaries have been changed, the city council must certify any changes or alteration in the ward boundaries to the registrar and deliver to him a map showing boundaries of the wards, the streets, avenues and alleys by name and the wards by numbers.

History: En. Sec. 19, Ch. 368, L. 1969.

23-3103. Designation of polling place. The commissioners shall make an order designating the place within each precinct where the election will be held at the session at which election judges are appointed. Copies of the order must be posted immediately in three (3) public places in the precinct.

History: En. Sec. 20, Ch. 368, L. 1969.

Changing Designation

Where a board of county canvassers refused to canvass election returns from a precinct on the ground that it appeared upon the face of the returns that the election had not been held at the place designated by the board of county commissioners, and on application for writ of mandate to compel them to act, nothing was shown affirmatively by pleadings or otherwise that the judges of election at the precinct had not pursued this section giving them authority to change the place of election upon two days' notice if for any reason it cannot be held at the place appointed, it will be presumed that official duty was regularly performed by them and that they did change it, and the writ will issue commanding action. State ex rel. Moore v. Patch, 65 M 218, 225, 211 P 202.

CHAPTER 32

JUDGES AND CLERKS OF ELECTIONS

Section

- 23-3201. Appointment of election judges—second board of election judges—duties.
- 23-3202. Manner of choosing election judges—vacancies—candidates and their relatives ineligible—exceptions.
- 23-3203. Judges to choose clerks and to serve until others appointed.
- 23-3204. Registrar to notify judges of their appointment and of impending general elections—judges to post notices of election.
- 23-3205. Oath of judges and clerks—may administer oaths.
- 23-3206. Instruction of judges.
- 23-3207. Compensation of judges and clerks.

23-3201. Appointment of election judges—second board of election judges—duties. (1) At their regular meeting next preceding a general primary election, the commissioners shall appoint five (5) election judges for each precinct having two hundred (200) or more electors and three (3) election judges for each precinct having less than two hundred (200) electors. Judges for new precincts shall be appointed based upon the estimated number of electors.

(2) If a precinct has three hundred fifty (350) or more electors, the commissioners may appoint a second board of five (5) election judges who shall have the same qualifications as the first board. The second board shall:

(a) Meet at their respective polling places as ordered;

(b) Count and tabulate ballots as soon as the first board has completed their duties in regard to the voting.

(3) If counting and tabulating the ballots is not completed by 8 a. m. on the day following the election, the first board shall reconvene and relieve the second board until 8 p. m. when the second board shall again reconvene and relieve the first board until the ballots are counted and tabulated.

(4) The election judges constituting the boards shall number the ballots and count the tally upon the tally sheets and indicate upon the tally sheets the work of each board. The board completing the county shall certify the returns as required by law.

History: En. Sec. 49, Ch. 368, L. 1969.

23-3202. Manner of choosing election judges — vacancies — candidates and their relatives ineligible—exceptions. (1) The election judges shall be chosen from lists of qualified voters submitted by the two (2) major political parties thirty-five (35) days or more before the commissioners meeting which precedes the next primary election.

(2) The list of each party must contain twice the number of election judges to be appointed and not more than a majority may be appointed from one (1) political party for each precinct.

(3) The commissioners may appoint election judges in their discretion to fill vacancies or if a major political party fails to submit a list of election judges.

(4) No person shall be appointed to serve as an election judge or election clerk who is a candidate, spouse of a candidate, or related to a candidate for office within the second degree of consanguinity. However, this subsection does not apply to school district elections nor to candidates for precinct committeeman or committeewoman.

History: En. Sec. 50, Ch. 368, L. 1969.

23-3203. Judges to choose clerks and to serve until others appointed.

(1) The election judges may appoint two (2) persons having the same qualifications as themselves to act as clerks of the election who serve at the pleasure of the judges.

(2) The election judges continue to be judges of all elections held in their precincts until other judges are appointed.

(3) The commissioners shall fill vacancies which occur in the office of election judge.

History: En. Sec. 51, Ch. 368, L. 1969.

23-3204. Registrar to notify judges of their appointment and of impending general elections—judges to post notices of election. (1) The registrar must notify the election judges in writing of their appointment.

(2) Twenty (20) days or more before any general election, the registrar shall mail two (2) notices of the election to the election judges. The notices shall be in the form prescribed by the secretary of state.

(3) Ten (10) days or more prior to the election, the election judges shall post one (1) notice at the place where the election will be held and the other in one (1) of the most public places in the precinct.

History: En. Sec. 52, Ch. 368, L. 1969.

23-3205. Oath of judges and clerks—may administer oaths. (1) Before votes are cast, the election judges and clerks must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other and to the clerks.

(2) Any election judge or a clerk may administer and certify oaths required during an election.

History: En. Sec. 53, Ch. 368, L. 1969.

23-3206. Instruction of judges. (1) Before each election, all election judges who do not possess a certificate of instruction shall be instructed by a person named by the commissioners in the powers, duties, and liabilities of election judges.

(2) The instructor shall call meetings as necessary.

(a) The election judge shall attend each meeting and receive at least two (2) hours of instruction.

(b) Each election judge shall receive compensation fixed by the commissioners at the prevailing federal minimum wage for instruction to be paid at the same time and in the same manner as for services on election day.

(3) Each judge shall receive a certificate of completion from the instructor upon completion of the course. Each certificate is valid for a period of two (2) years.

(4) No person shall serve as election judge without a valid certificate. However, this does not apply to persons filling vacancies in emergencies.

(5) Notice of place and time of instruction must be given to the county chairmen of the two (2) major political parties by the commissioners.

History: En. Sec. 54, Ch. 368, L. 1969.

23-3207. Compensation of judges and clerks. The compensation of election judges and clerks shall be fixed by the commissioners at the pre-

vailing federal minimum wage and be paid from county funds. The commissioners shall audit the accounts.

History: En. Sec. 55, Ch. 368, L. 1969.

CHAPTER 33

PRIMARY ELECTIONS AND NOMINATIONS BY CERTIFICATE

Section

- 23-3301. Date of primary election—candidates to be selected.
- 23-3302. Primaries in cities over certain size—procedure.
- 23-3303. Notices of election.
- 23-3304. Declaration of nomination—filing—fees—printing of victorious write-in candidates on general election ballot.
- 23-3305. Deadline for filing nominating declarations—persons with whom filed.
- 23-3306. Register of candidates—public record—disposition of pollbooks, tally sheets, ballots, etc.
- 23-3307. Arrangement of information concerning candidates—duties of secretary of state—duties of registrar or city clerk.
- 23-3308. Ballots, how arranged and voted.
- 23-3309. Official and sample ballots—preparation and number.
- 23-3310. Election clerks' and judges' duties upon closing of polls.
- 23-3311. Tally sheets—keeping and announcing the tally—statement.
- 23-3312. Duties of election clerks and judges after canvassing votes—seal.
- 23-3313. Abstracts of votes, when and how made—decision by lot in event of tie—certificate for compensation—highest number of votes nominates.
- 23-3314. Copy of abstracts to be sent secretary of state—canvass by secretary of state—governor's certificate of nomination and proclamation—decision by lot in event of tie.
- 23-3315. Error in ballot or other wrongful or neglectful act.
- 23-3316. Contest—notice—hearing—how tried and decided—certificate.
- 23-3317. Penalty for violation of act—officials—candidates.
- 23-3318. Certificates of nomination by individuals or parties not appearing on prior ballot—requisites—applicability.
- 23-3319. Certificates of nominations to be preserved—certification of candidates' names and descriptions—statement of votes received by candidate.
- 23-3320. Parties governed by act—right to use of party name—printing of candidates' names on ballots—parties that may nominate by certificate.
- 23-3321. Declining nomination—vacancies before and after primary.

23-3301. Date of primary election—candidates to be selected. The primary election shall be held on the first Tuesday in June preceeding any general election to select candidates for:

- (1) United States senators and representatives in Congress;
- (2) Other elective state, district, and county officers;
- (3) Delegates to any constitutional convention who will be chosen at the ensuing general election;
- (4) County central committeemen and committeewomen by the political parties.

History: En. Sec. 56, Ch. 368, L. 1969.

23-3302. Primaries in cities over certain size—procedure. In cities having a population of three thousand five hundred (3,500) or more as shown by the most recent federal or state census:

- (1) The nomination of candidates by primary election for city offices shall be subject to the provisions of this chapter;
- (2) Political parties shall file declarations of nominations for city offices with the city clerk;

(3) The duties of the city clerk are the same as the registrar in conducting the primary elections, and the city clerk shall send notices of the primary election in the same manner as registrars send notices for nominations for county offices at primary elections;

(4) On the fourteenth day preceding a city election, the cities shall hold primary elections;

(5) If no declarations are filed forty (40) days or more before the primary election, no primary election shall be held and the city clerk shall certify to the registrar thirty-five (35) days or more before the date of the primary election that no petitions have been filed;

(6) The council shall;

(a) establish city voting precincts and wards,

(b) appoint city judges and clerks of elections and other officers necessary for the election.

(c) perform other necessary duties in the same manner prescribed for city elections.

History: En. Sec. 57, Ch. 368, L. 1969.

23-3303. Notices of election. (1) Twenty (20) days before any primary election, the registrar shall prepare printed notices of the election and mail two (2) notices to each judge of election.

(2) Each judge and clerk shall immediately post the notices in public places in their precinct.

(3) Notices shall be in the form, and contain information, as prescribed by the secretary of state.

History: En. Sec. 58, Ch. 368, L. 1969.

23-3304. Declaration of nomination—filing—fees—printing of victorious write-in candidates on general election ballot. (1) Each candidate in the primary election, shall send a declaration of nomination to the secretary of state, registrar, or city clerk.

(2) The candidate must sign the declaration and send with it the required filing fee, to be acknowledged by a notary public if by mail, or by the officer of the office at which the filing is made.

(3) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(4) Nominating declarations are filed:

(a) In the office of secretary of state for congressional offices, state or district offices to be voted for in more than one (1) county, members of the legislative assembly, and judges of the district court;

(b) In the office of the registrar for county and district offices to be voted for in one (1) county only, and for township and precinct offices;

(c) In the office of the city clerk for all city officers.

(5) Filing fees are as follows:

(a) For offices having a salary of one thousand dollars (\$1,000) or less per annum, ten dollars (\$10), except candidates for the legislative assembly or lieutenant governor must pay fifteen dollars (\$15);

(b) For offices having a salary of more than one thousand dollars (\$1,000) per annum, one per cent (1%) of the total annual salary;

(c) For the offices of county commissioner;

- (i) in counties of the first class, forty dollars (\$40),
- (ii) in counties of the second class, thirty-five dollars (\$35),
- (iii) in counties of the third class, thirty dollars (\$30),
- (iv) in counties of the fourth class, twenty-five dollars (\$25),
- (v) in counties of other classes, ten dollars (\$10),

(d) For offices in which compensation is paid in fees, five dollars (\$5);

(e) For state, county, and precinct committeemen, delegates to national conventions, and presidential electors, no fees are required.

(6) A person nominated by having his name written in on the primary ballot and desiring to accept the nomination shall not have his name printed on the general election ballot unless he:

(a) Files with the secretary of state, registrar, or city clerk, at least ten (10) days after the primary a written declaration indicating his acceptance of the nomination;

(b) Pays the required filing fee,

(c) Received at least five per cent (5%) of the votes cast for the office at the last preceding general election.

(7) The declaration for nomination shall be in form and contain information, prescribed by the secretary of state. Every declaration must be signed by the elector seeking nomination.

History: En. Sec. 59, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Time for Filing Acceptance by Write-in Candidate

Under prior statute requiring write-in candidate to file within ten days after "election," the term "election" meant the day of election and not the day on which the canvass of the ballots was completed,

hence a candidate for house of representatives who filed acceptance 18 days after election was not entitled to a writ of mandate to compel the county clerk to include his name on the general election official ballot. *State ex rel. Wulf v. McGrath*, 111 M 96, 97, 106 P 2d 183.

23-3305. Deadline for filing nominating declarations—persons with whom filed. Nominating declarations shall be filed not later than 5 p.m. forty (40) days before the date of the primary election. Declarations for nomination to an office filled by election throughout the state, as judge of a district court, to an office filled by election in more than one (1) county, or as a member of the legislative assembly shall be filed with the secretary of state. Declarations for nomination to an office filled by election in one (1) county, or district or city shall be filed with the registrar or city clerk.

History: En. Sec. 60, Ch. 368, L. 1969.

23-3306. Register of candidates—public record—disposition of poll-books, tally sheets, ballots, etc. (1) The secretary of state, registrar, and city clerk shall keep a "Register of Candidates for Nomination at the Primary Nominating Election." The entries in the register shall contain on separate pages for each political party showing:

(a) The title of the office sought, and the name and residence of each candidate;

(b) The name of his political party;

(c) The date of receiving the declaration for nomination signed by the candidate;

(d) Other information as may aid in arranging the official ballot.

(2) Immediately after the canvass of votes of the primary election, the officer shall enter in the register the date of entry, the name of each candidate nominated, the office for which he is nominated, and the name of the party making the nomination.

(3) When filed, the registers, declarations of nominations, letters and notices, and other documents required by law are public records and open to inspection under proper regulation. Certified copies shall be available upon payment of the fee.

(4) The registrar shall keep all pollbooks, tally sheets, ballots, ballot stubs, and other documents for one (1) year, and then he shall destroy them.

History: En. Sec. 61, Ch. 368, L. 1969.

23-3307. Arrangement of information concerning candidates—duties of secretary of state—duties of registrar or city clerk. (1) Not more than forty (40) days and not less than thirty-two (32) days before the date of the primary election, the secretary of state shall:

(a) Arrange all names and information concerning candidates contained in the valid nominating declarations;

(b) Certify the arrangement under state seal, file it in his office, and transmit a duplicate by registered mail to each registrar;

(c) Post a duplicate in a conspicuous place in his office until after the primary election.

(2) Not more than thirty (30) days, and not less than twenty (20) days before the date of the primary election, the registrar or city clerk shall:

(a) Arrange, as required by law, the names and other information concerning the candidates and parties named in the valid nominating declarations which have been certified to him or filed with him;

(b) Certify the arrangement, file it in his office, and post a duplicate in a conspicuous place in his office until after the primary;

(c) Have colored sample ballots and the official ballots printed as required by law.

History: En. Sec. 62, Ch. 368, L. 1969.

23-3308. Ballots, how arranged and voted. (1) At the primary, there shall be a ballot for each political party entitled to participate. Each ballot shall be printed on a separate sheet of white paper of the same size, folded, and securely fastened at the top.

(2) Candidates' names shall be arranged alphabetically by surnames, under the offices and under the proper party designation. When two (2)

or more persons are candidates for nomination for the same office, the registrar shall divide the ballot to provide a rotation of the names of the candidates as follows:

(a) Divide all county ballot forms into sets equal in number to the greatest number of candidates for nomination or election to any office;

(b) Arrange the sets so that candidates' names are rotated by removing one name from the top of the list for each nomination or office and place the name or number at the bottom of the list for each successive set of ballot forms; however, in printing ballots for use in any one (1) precinct, only one (1) set shall be used and they shall be identical;

(c) If an elector writes the name of a person upon a ballot, and the person's name appears as a candidate upon another ballot, the ballot shall count for the person only as a candidate of the party upon whose ticket his name is written;

(d) If a person is nominated upon more than one (1) ticket, not later than ten (10) days after the election he shall file written notification with the secretary of state, registrar, or city clerk the party under which his name is to appear upon the ballot for the general election, and, if he fails to notify the proper officers, his name shall appear under the party with whom his nominating declaration was first filed;

(e) If a person fails to be nominated upon the party ticket contained in his nominating declaration, his name shall not be printed upon any ballot with party designation;

(f) This act does not preclude an elector from having his name printed upon the ballot as an independent candidate, and no candidate shall have his name printed on more than one (1) ticket.

(3) Ballots shall be printed on white paper in the form of the Australian ballot and the candidates of each party shall be printed on a separate ticket.

(4) After preparing his ballot, the elector shall detach it from the remaining tickets and fold it so that the face is concealed and the official stamp is seen;

(a) The elector shall fold the remaining tickets, vote the marked ballot without leaving the polling place, and deposit the remaining tickets in a separate box marked as the blank ballot box;

(b) Immediately after the recount period, the election judges shall, without examination, destroy the tickets deposited in the blank ballot box.

History: En. Sec. 63, Ch. 368, L. 1969.

23-3309. Official and sample ballots—preparation and number. (1) Ballots equal to the number of voters entitled to vote in the primary shall be printed and furnished to each election precinct.

(2) If a political party desires sample ballots its political committee may order them from the registrar or city clerk and pay the costs of printing. The registrar or city clerk shall order delivery in writing of the sample ballots and no sample ballots shall be printed without an order from the registrar or city clerk.

(3) Sample ballots shall be duplicates of the official ballot, but shall not be printed on white paper, shall not have the same margins, and shall not have perforated stubs.

History: En. Sec. 64, Ch. 368, L. 1969.

23-3310. Election clerks' and judges' duties upon closing of polls. Immediately after the polls are closed at a primary election, the election clerks and judges shall open the ballot boxes and:

- (1) Count the ballots cast by each political party and fasten the ballots cast for each political party into separate files,
- (2) Take the tally sheets provided by the registrar and count the ballots for each political party,
- (3) Certify the number of votes cast for each candidate for each office,
- (4) Place the counted ballots in the box.

History: En. Sec. 65, Ch. 368, L. 1969.

23-3311. Tally sheets—keeping and announcing the tally—statement.

(1) The registrar shall furnish tally sheets for each political party having candidates in the primary election for each voting precinct. Tally sheets shall contain the names of the candidates, names of the political parties designated at the head, and be numbered in the order in which the names appear on the official ballot.

(2) Tally sheets shall show:

- (a) The number and name of each person voted for;
- (b) Office for nomination to which each person was voted for;
- (c) Total number of votes cast for each candidate for nomination.

(3) The election clerks and judges shall audibly announce the tally or count, and shall keep the tally in the form prescribed by the secretary of state. The tally or count shall be certified by the election clerks and judges.

(4) The election clerks shall in ink:

- (a) Keep tally upon the prescribed tally sheet of each political party;
- (b) Total the number of tallies and write the total immediately to the right of the last tallies for each candidate and also in the columns headed "total vote";

(c) Prepare the certificate required by subsection (3) of this section;

(d) Immediately upon completion of the count, sign the tally sheets, and each clerk shall certify which sheets were kept by him;

(e) If the chairman and judges are satisfied with the correctness of the tally sheets, they shall sign all the tally sheets.

(5) The election clerks shall then prepare a statement of that portion of the tally sheets showing the number and name and political party of each candidate for nomination and the office and total votes received by each in the precinct, and shall prepare the certificate. The election clerks and judges who complete the count shall sign the statement and immediately post it in a conspicuous place outside of the polls. The statement shall remain posted for ten (10) days.

History: En. Sec. 66, Ch. 368, L. 1969.

23-3312. Duties of election clerks and judges after canvassing votes—seal. (1) Immediately after canvassing votes, the election clerks and judges who complete the count shall enclose the pollbooks in separate envelopes and securely seal them. The election clerks and judges shall:

- (a) Enclose the tally sheets in separate envelopes and securely seal them;
- (b) Enclose the precinct registers in separate envelopes and securely seal them;
- (c) Enclose all ballots fastened together and in separate envelopes and securely seal them;
- (d) Specify in ink the contents, and address each package to the registrar of the county in which the election precinct is situated;
- (e) Mark the sealed ballot packages on the outside showing what numbers are contained, but once sealed they are not to be opened until ordered by the proper court.

(2) When the count is completed, the sealed ballots shall be placed in two (2) ballot boxes, the boxes locked and the seal of the board pasted over the keyhole and rim of the lid so that to open the box the seal must be broken. The registrar or the canvassers making the abstracts of the votes shall not break the seal, nor shall anyone break the seal except upon court order in case of contest or on order of the commissioners when the boxes are needed for the ensuing election.

History: En. Sec. 67, Ch. 368, L. 1969.

23-3313. Abstracts of votes, when and how made—decision by lot in event of tie—certificate for compensation—highest number of votes nominates. (1) At 8 a. m. in the third day after the close of any primary election, or at 8 a. m. on a day sooner if all the returns are in, the registrar, taking two (2) assistants who are justices of the peace, county commissioners, or either, shall open the returns and make abstracts of the votes.

(2) Abstracts of votes for nomination of each party for governor, lieutenant governor, secretary of state, attorney general, state auditor, superintendent of public instruction, railroad commissioners, clerk of the supreme court, state treasurer, justices of the supreme court, United States senators, United States representatives, judges of the district court, and members of the legislative assembly, shall be on one (1) sheet, separately for each political party, and shall be forthwith transmitted to the secretary of state, as required by section 23-3314.

(3) Abstracts of votes for county and precinct offices shall be placed on separate sheets for each political party, and the registrar shall certify the nomination for each party and enter upon his register of nominations the name of each of the persons having the highest number of votes for nomination. He shall notify each person who is nominated by mail.

(4) If there is a tie for the same nomination in one (1) party, the registrar shall notify the affected persons to come to his office at a time set by the registrar. The registrar shall then decide publicly by lot which of the persons is the nominee. The registrar shall enter the name of the person chosen as nominee upon his register of nominations.

(5) The registrar shall, on receipt of the primary returns, make out a certificate stating the compensation the election clerks and judges are entitled to and transmit this certificate to the commissioners. The commissioners shall order the compensation paid out of the county treasury.

(6) In all primary elections, the person having the highest number of votes for nomination to any office is the nominee for his political party for that office.

History: En. Sec. 68, Ch. 368, L. 1969.

23-3314. Copy of abstracts to be sent secretary of state—canvass by secretary of state—governor's certificate of nomination and proclamation—decision by lot in event of tie. (1) The registrar, immediately after making the abstracts of votes, shall send a copy of each of the abstracts by mail to the secretary of state.

(2) The secretary of state shall, in the presence of the governor and the state treasurer, proceed not later than fifteen (15) days after the date of the primary election to canvass the votes given for nomination for governor, United States senator, United States representative, lieutenant governor, attorney general, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, state auditor, justices of the supreme court, clerk of the supreme court, judges of the district court, members of the legislative assembly, and all other officers voted in any district comprising more than one county.

(3) The governor shall grant a certificate of nomination to the person having the highest number of votes for each office, and shall issue a proclamation declaring the nomination of each person by his party.

(4) When a tie exists between two (2) or more persons for nomination in the same party, the secretary of state shall immediately give notice to the persons tied, to attend in person or by attorney, at his office at a time appointed by him. He shall then publicly decide by lot which person is nominated by his party. The governor shall issue his proclamation declaring the nomination of that person.

History: En. Sec. 69, Ch. 368, L. 1969.

23-3315. Error in ballot or other wrongful or neglectful act. (1) Whenever it appears by affidavit to the district court, to the supreme court, or to a supreme court judge:

(a) That an error or omission has occurred, or is about to occur, in the printing of the name of any candidate or other matter on the official primary nominating election ballots;

(b) That any error has been, or is about to be, committed in the printing of the ballots;

(c) That the name of any person or any other matter has been, or is about to be, wrongfully placed upon the ballots;

(d) That any wrongful act has been performed by any judge or clerk of the primary election; registrar, canvassing board or member, or by any person charged with a duty under this act, or that any neglect of duty by any of the persons has occurred or is about to occur; the court

shall require by order the officer or person charged with the act or neglect to perform his duties required by law or show cause why the order should not issue.

(2) Failure to obey the court order is contempt.

(3) Any person aggrieved by the refusal or failure of any person to perform any duty required by this act shall, without derogation of any other right or remedy, be entitled to seek a writ of mandamus in the district court and the proceeding shall be immediately heard and decided.

History: En. Sec. 70, Ch. 368, L. 1969.

23-3316. Contest—notice—hearing—how tried and decided—certificate.

(1) Five (5) days or less after a person has been nominated, any person wishing to contest the nomination to any state, county, district, township, precinct, or city office shall give notice in writing to the person whose nomination he intends to contest briefly stating the cause for the contest.

(2) The contestant shall make application to the district court judge in the county where the contest is to be had. The judge shall then set the time for the hearing.

(3) The contestant shall serve notice three (3) days before the hearing is scheduled. The notice shall state the time and place of the hearing.

(4) The judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying his judgment into effect. The order of the judge shall express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling.

(5) Each party is entitled to subpoenas.

(6) The registrar shall issue a certificate to the person declared nominated by the court. The certificate shall be conclusive evidence of the right of the person to hold the nomination.

History: En. Sec. 71, Ch. 368, L. 1969. Procedure to contest of nomination, see M. R. Civ. P., Rule 81(a), Table A.

Cross-Reference

Application of Montana Rules of Civil

23-3317. Penalty for violation of act—officials—candidates. (1) If an election clerk or judge of a primary election, or other officer or persons on whom a duty is enjoined, willfully neglects that duty or commits any corrupt act in the discharge of his duty, he is guilty of a violation of this act. Upon conviction, he shall be imprisoned in the state prison for not less than one (1) year nor more than five (5) years, imprisoned in the county jail for not less than three (3) months nor more than one (1) year, or fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(2) If a candidate for nomination is guilty of any act which is wrongful or unlawful, or acts at the primary which would be sufficient to cause his removal from office if committed at the regular general election, he shall, upon conviction, be removed from office in the same manner

as though the act had been committed at a regular general election, even though he may have been regularly elected and was not guilty of a wrongful or unlawful act at the election at which he was elected to his office.

History: En. Sec. 77, Ch. 368, L. 1969.

23-3318. Certificates of nomination by individuals or parties not appearing on prior ballot—requisites—applicability. Except as provided in subsection (6) of this section, nominations for public office by an individual or a political party which did not appear on the ballot in the next preceding election may be made by executing a certificate of nomination.

(1) The certificate must be in writing and contain:

(a) The name of a candidate for the office to be filled;

(b) His residence, his occupation, and his business address.

(2) If a certificate is filed by a political party which did not appear on the ballot in the next preceding election, it must contain the party name and in five (5) words or less the principle which such body represents.

(3) The certificate must be signed by electors residing within the state and district, or political division in which the officer or officers are to be elected. Each elector signing a certificate shall add to his signature his place of residence, and his business address.

(4) The number of signatures must be five per cent (5%) or more of the total vote cast for the successful candidate for the same office at the next preceding election.

(5) The candidates for nomination shall file the certificates ninety (90) days prior to the date of the general election.

(6) A person who desires to run for president or vice-president as an independent candidate, must file a certificate of nomination with the secretary of state. The certificate must have the signatures of electors equal to five per cent (5%) or more of the legal votes cast for governor at the next preceding general election. He must also nominate the required number of electors allowable to Montana and certify the names to the secretary of state.

(7) This section shall not apply to nominations for special elections or to fill vacancies.

History: En. Sec. 78, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Error in Certificate

Under the law governing conventions and primary meetings, an error in the party name on the certificate of nomination rendered it void. *State ex rel. Scharni-kow v. Hogan*, 24 M 397, 401, 62 P 683.

The inadvertent failure to include the name of a convention nominee for a certain office in the certificate of nominations renders the certificate insufficient. *State ex rel. Galen v. Hays*, 31 M 227, 231, 78 P 301.

Party Candidate

It is by means of the certificate of nomination that the county clerk is informed how to prepare the official ballot for the electors. The secretary of state cannot certify a candidate nominated by electors, as the candidate of a political party; for clearly he is not such a candidate and has no place in a group of candidates certified as nominated by a regular political party convention or or-

ganization, under the name of the party making such nomination. State ex rel. Woody v. Rotwitt, 18 M 502, 510, 511, 46 P 370.

Time of Filing

Prior law requiring certificates of nomination to be filed with the secretary of

state not more than sixty nor less than thirty days before election was mandatory and a certificate of original nominations made at a party convention could not be filed less than thirty days before election. State ex rel. Galen v. Hays, 31 M 227, 230, 78 P 301.

23-3319. Certificates of nominations to be preserved—certification of candidates' names and descriptions—statement of votes received by candidate. (1) The secretary of state, registrars, and city clerks shall preserve all certificates of nominations for one (1) year. All certificates shall be open to public inspection under rules adopted by the various offices.

(2) Forty-five (45) days or more before an election, the secretary of state shall certify to the registrars the name and description of each person nominated, as specified in the certificates of nomination filed with him.

(3) Each election board shall transmit to the secretary of state a statement of the number of votes cast for a person as the candidate for the independent body by which he was nominated.

History: En. Sec. 79, Ch. 368, L. 1969.

23-3320. Parties governed by act—right to use of party name—printing of candidates' names on ballots—parties that may nominate by certificate. (1) Every political party which received three per cent (3%) or more of the total vote cast for governor at the next preceding general election in the county, district, or state for which nominations are proposed to be made, shall nominate its candidate for public office in the county, district or state under this act.

(2) Every political party, and its regularly nominated candidates, members and officers, has the sole and exclusive right to the use of the party name. No candidate for office may use any word of the name of any other political party or organization other than that by which he is nominated.

(3) An independent or nonpartisan candidate shall not use any word of the name of any existing political party or organization in his candidacy.

(4) The names of candidates for public office nominated under this act shall be printed on the official ballots for the ensuing election as the only candidates of the respective parties for public office in the same manner as the names of the candidates nominated by other methods are required to be printed on the official ballots.

(5) Any political party that did not receive three per cent (3%) or more of the total vote cast for governor, as provided in subsection (1) of this section, and any new political party about to be formed, may make nominations for public office as provided in section 23-3318.

History: En. Sec. 80, Ch. 368, L. 1969.

Presidential Electors Are Candidates for Public Office

Candidates for presidential electors were candidates for public office, within the

meaning of prior section. State ex rel. Foster v. Mountjoy, 83 M 162, 168, 271 P 446.

Use of Term "Independent"

Assuming (but not deciding) that an existing political party may use the term "Independent" in its party name, such use cannot deprive another candidate from

employing that term in designating the character of his candidacy for the same office, and section prohibiting an independent candidate from using any word of the name of an existing political party has no application in such circumstances. State ex rel. Wheeler v. Stewart, 71 M 358, 361, 230 P 366.

23-3321. Declining nomination—vacancies before and after primary.

(1) Twenty (20) days or more before the election, a person nominated for public office may decline the nomination by a writing sent to the office with whom his nominating declaration is filed. In city elections, the declination shall be made ten (10) days or more before the election.

(2) If a vacancy occurs in the office of a candidate in case of death or removal from the state or district before the date of the primary, the vacancy shall be filled by the affected political party.

(3) When a vacancy occurs in the office of a candidate after the primary and before the general election in a multicounty district, the vacancy shall be filled as follows:

(a) The vacancy shall be filled by a committee of three (3) members selected from each county by the county central committees of the affected political party.

(b) The secretary of the committee shall transmit a certificate to the secretary of state with the information contained on the original certificate plus the cause of the vacancy, the name of the person nominated, the office to be filled, and the name of the person for whom the nomination was made.

(c) When the certificate is filed with the secretary of state he shall insert the name of the person nominated to fill the vacancy.

(d) If the secretary of state has certified the nominations to the registrars, he shall immediately certify to the registrars the name of the person nominated to fill the vacancy, the office to be filled, the party or political principle he represents, and the name of the person for whom the nominee is substituted.

History: En. Sec. 82, Ch. 368, L. 1969.

Cross-Reference

Inducement to accept or decline nomination, sec. 94-1456.

Defective Proceedings

An election will not be declared void by reason of nonprejudicial defects in the manner in which nomination was declined where question was raised after election. Stackpole v. Hallahan, 16 M 40, 51, 40 P 80.

Write-in Candidates

Where a successful write-in candidate at a nominating election failed to file his acceptance within ten days after election day, his subsequent resignation did not result in a vacancy which the county cen-

tral committee of his party could fill. State ex rel. Wilkinson v. McGrath, 111 M 102, 106 P 2d 186.

Where a candidate for re-election to a county office died 24 days before election, his death known generally to electors, but his name placed on ballot and majority voted for him supposing to retain his widow, appointed to fill the vacancy, until the next general election, a write-in candidate whom they intended to defeat, receiving the highest vote cast for any living person, held, on his application for writ of mandate to compel the county canvassing board to reconvene and cause certificate of election issued to him, that write-in candidate elected and entitled to the office. State ex rel. Wolff v. Geurkink, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

DECISIONS UNDER FORMER LAW

Death after Election

Former law did not empower county central committee to make an original nomination of a candidate to an office to be filled at a special election where the officer-elect died after election and before induction into office. State ex rel. Smith v. Duncan, 55 M 376, 177 P 248, distinguished in 116 M 283, 291, 149 P 2d 913.

tion, and has authorized its committee to fill any vacancy that may occur, the filling of the vacancy by the committee upon the death or resignation of the candidate, or because the original certificate of nomination was or became insufficient or inoperative, may be made at any time before the day of election. State ex rel. Scharnikow v. Hogan, 24 M 397, 402, 62 P 683; State ex rel. Galen v. Hays, 31 M 227, 231, 78 P 301.

Time for Filling Vacancies

When a convention has made a nomina-

CHAPTER 34

POLITICAL PARTIES, COMMITTEEMEN AND COMMITTEES

Section

- 23-3401. Two committeemen to be elected at primary by each party—nomination—names on party ticket.
- 23-3402. Committeemen as party representative—county and city central committees—term—vacancy.
- 23-3403. Committees' powers—state central committee to appoint county central committee where none exists.
- 23-3404. Committees to fill vacancies among nominees under certain circumstances.
- 23-3405. Organization of committee—meeting—county convention to elect delegates and alternates to state convention.
- 23-3406. Powers of parties.
- 23-3407. Payment of convention expenses—payment of delegates and alternates to conventions to nominate presidential electors.

23-3401. Two committeemen to be elected at primary by each party—nomination—names on party ticket. (1) Each political party shall elect at each primary election one (1) man and one (1) woman who shall serve as committeemen for each election precinct. The committeemen shall be residents and registered voters of the precinct.

(2) An elector may be placed in nomination for committeeman by a writing so stating, signed by the elector, notarized, and filed in the office of the registrar within the time for filing declarations naming candidates for nomination at the regular biennial primary election.

(3) The names of candidates for precinct committeeman of each political party shall be printed on the party ticket in the same manner as other candidates and the voter shall vote for them in the same manner as he does for other candidates.

History: En. Sec. 72, Ch. 368, L. 1969.

23-3402. Committeemen as party representative—county and city central committees—term—vacancy. (1) Each committeeman shall represent his political party for the precinct in all ward or subdivision committees formed.

(2) The committeemen in each precinct shall constitute the county central committee of the respective political parties.

(3) Committeemen who reside within the limits of a city are ex officio the city central committee of their respective political parties and

have the power to make their own rules not inconsistent with those of the county central committee. However, the county central committee has the power to fill vacancies in the city central committee.

(4) Each precinct committeeman has a term of two (2) years from the date of his election.

(5) If a vacancy occurs, the remaining members of the county committee may select a precinct resident to fill the vacancy.

History: En. Sec. 73, Ch. 368, L. 1969.

23-3403. Committees' powers—state central committee to appoint county central committee where none exists. (1) The county and city central committee may:

(a) Make rules for the government of its political party in each county, not inconsistent with any of the provisions of this act nor the rules of its state political party;

(b) Elect two (2) county members of the state central committee, one (1) shall be a man and one (1) shall be a woman; elect the members of the congressional committee; and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee.

History: En. Sec. 74, Ch. 368, L. 1969.

23-3404. Committees to fill vacancies among nominees under certain circumstances. County and city central committees may make nominations to fill vacancies occurring among the candidates of their respective parties nominated for city or county offices by the primary election if the vacancy is caused by death, resignation, or removal from the electoral district but not otherwise.

History: En. Sec. 75, Ch. 368, L. 1969.

Write-in Candidate

Where a successful write-in candidate at a nominating election failed to file his acceptance within ten days after election

day, his subsequent resignation did not result in a vacancy which the county central committee of his party could fill. State ex rel. Wilkinson v. McGrath, 111 M 102, 106 P 2d 186.

DECISIONS UNDER FORMER LAW

Death after Election

Former law did not empower county central committee to make an original nomination of a candidate to an office to be filled at a special election, where the

officer-elect died after election and before induction into office. State ex rel. Smith v. Duncan, 55 M 376, 177 P 248, distinguished in 116 M 283, 291, 149 P 2d 913.

23-3405. Organization of committee—meeting—county convention to elect delegates and alternates to state convention. (1) The committee shall meet prior to the state convention of its political party and organize by electing a chairman and one (1) or more vice-chairmen. The chairman or first vice-chairman shall be a woman. They shall elect a secretary and other officers as are proper. It is not necessary for the officers to be precinct committeemen.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise any and all powers conferred upon the county, city, state, and congressional central committees by this act.

(3) The chairman of the county central committee shall call the central committee meeting and not less than four (4) days before the date of the central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call, enclosing a blank proxy, to each precinct committeeman. No proxy shall be recognized unless held by an elector of the precinct of the committeeman executing it.

(4) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman or officer of the committee is entitled to participate in the proceedings of the committee.

(5) If a committeeman and the appointed proxy are absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of the delegates.

History: En. Sec. 76, Ch. 368, L. 1969.

23-3406. Powers of parties. (1) Each political party shall have power to:

- (a) Make its own rules and regulations;
- (b) Provide for and select its own offices;
- (c) Call conventions and provide for the number and qualification of delegates;
- (d) Adopt platforms;
- (e) Provide for selection of delegates to national conventions;
- (f) Provide for the nomination of presidential electors;
- (g) Provide for the selection of national committeemen and women;
- (h) Make nominations to fill vacancies occurring among its candidates nominated for offices to be filled by the state at large or by any district consisting of more than one (1) county where such vacancies are caused by death, resignation or removal from the electoral district;
- (i) Perform all other functions inherent in such an organization.

History: En. Sec. 81, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-3407. Payment of convention expenses—payment of delegates and alternates to conventions to nominate presidential electors. (1) Except as provided in subsection (2) of this section, expenses of county and state conventions shall be paid by the political parties.

(2) Elected delegates and alternates attending state conventions to nominate presidential electors shall be paid eight cents (\$.08) per mile for travel to and from the convention paid from the county general fund.

History: En. Sec. 83, Ch. 368, L. 1969.

CHAPTER 35

ELECTION SUPPLIES AND BALLOTS

Section

- 23-3501. Items to be furnished by commissioners.
- 23-3502. City clerk to act in city elections.
- 23-3503. Registrars or city clerks to deliver ballots and rubber stamp before opening of polls.
- 23-3504. Forms for election returns.
- 23-3505. Completion and posting of forms.
- 23-3506. Registrar to provide printed ballots—marking by electors—other ballots ineffective.
- 23-3507. Ballot for questions submitted to the people—duties of registrar and city clerk.
- 23-3508. Printing and distribution of ballots at public expense—uniformity.
- 23-3509. Printing of candidate's name and party designation on ballot—no party designation for candidates for supreme and district court judgeships—persons nominated by more than one party.
- 23-3510. Pastors to be printed and distributed where vacancy has been filled—election judges to affix.
- 23-3511. Arrangement of names—rotation on ballot.
- 23-3512. Columns and material to be printed on ballot.
- 23-3513. Order of placement.
- 23-3514. Blank space and margin.
- 23-3515. Stub, size and contents.
- 23-3516. Number of ballots to be provided for each precinct.
- 23-3517. Short-term and long-term elections for same office—order of offices on ballot.

23-3501. Items to be furnished by commissioners. The commissioners shall:

- (1) Furnish pollbooks to each election precinct in a form prescribed by the secretary of state;
- (2) Furnish printed blanks for precinct registers, pollbooks, tally sheets, lists of electors, tickets, and returns, together with envelopes in which to enclose the returns;
- (3) Furnish for each polling precinct a ballot box or canvas pouch with a lock and key for the ballots and detached stubs.

History: En. Sec. 84, Ch. 368, L. 1969.

Cross-Reference

County commissioners to furnish pollbooks, sec. 16-1156.

23-3502. City clerk to act in city elections. In city elections, the city clerk shall perform all duties prescribed for registrars in this chapter.

History: En. Sec. 85, Ch. 368, L. 1969.

23-3503. Registrars or city clerks to deliver ballots and rubber stamp before opening of polls. Before the opening of the polls, the registrars or city clerks shall:

- (1) Deliver the election ballots to the judges of election in each polling place;
- (2) Deliver a rubber stamp which contains the words "Official Ballot," the name or number of the election precinct, the name of the county, the date of the election, and the name and official designation of the clerk who furnished the ballots.

History: En. Sec. 86, Ch. 368, L. 1969.

23-3504. Forms for election returns. In sending out election supplies to each precinct, the registrars shall send six (6) or more printed forms with a return envelope to the election judges to be used in sending election returns for public information. The forms shall be in ballot form and have printed on them the names of each candidate and each proposition.

History: En. Sec. 87, Ch. 368, L. 1969.

Transmitting Forms

Forms on which judges of election must summarize the result of the vote are not

a part of the election returns and are not required to be transmitted to the clerk in sealed packages. *Dubie v. Batani*, 97 M 468, 478, 37 P 2d 662.

23-3505. Completion and posting of forms. (1) Immediately after all the ballots are voted in each precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the blanks furnished by the registrars in the preceding section.

(2) The election judges shall immediately post one of the blanks at the polling place, and send a copy by mail to the registrar.

History: En. Sec. 88, Ch. 368, L. 1969.

23-3506. Registrar to provide printed ballots—marking by electors—other ballots ineffective. Except as otherwise provided in this act:

(1) The registrar shall provide printed ballots for every election for public officers. He shall print on the ballot the names of all candidates, including candidates for chief justice and associate justices of the supreme court, and judges of the district courts;

(2) An elector may write or paste on his ballot the name of any person for whom he desires to vote for any office, but must mark it as provided in section 23-3606. When the ballot is marked in this manner it must be counted the same as though the name is printed upon the ballot and marked by the voter;

(3) Ballots other than those printed by the registrars may not be cast or counted in any election.

History: En. Sec. 89, Ch. 368, L. 1969.

Cross-References

Constitutional amendments, separate ballot prohibited, sec. 37-105.

Initiative and referendum, ballot, sec. 37-107.

Separate ballot for bonds and levies, sec. 37-107.

Use of Uniform Ballot Required

By statute a uniform ballot has been adopted, to be printed and distributed at public expense, and no others than those so provided can be cast or counted. *Harrington v. Crichton*, 53 M 388, 391, 164 P 537.

23-3507. Ballot for questions submitted to the people—duties of registrar and city clerk. (1) When the secretary of state has certified to the registrar any question to be submitted to a vote of the people, the registrar must print the ballot in a form which will enable the electors to vote upon the question presented as provided by law.

(2) The registrar must prepare the necessary ballots whenever any question is to be submitted to the electors of any locality, or of the state generally. However, for questions submitted to the electors of a city alone, the city clerk shall prepare the necessary ballot.

History: En. Sec. 90, Ch. 368, L. 1969.

23-3508. Printing and distribution of ballots at public expense—uniformity. (1) All ballots cast for public officers within the state, except school district officers, must be printed and distributed at public expense.

(2) The county shall pay for the printing of ballots and cards of instruction for elections in each county.

(3) The expense of printing and delivering ballots in city elections is a charge upon the city in which the election is held.

(4) All official ballots must be uniform in size and printing. This involves:

(a) Uniformity in the type of ink used, which must be black, size of paper, type of white paper and arrangement of the paper, and the names of candidates printed upon the ballots shall be in type of the same size and character;

(b) When the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot;

(c) The ballots must contain the name of every candidate whose nomination is certified under law for a special office and no other names except that the names of candidates for president and vice-president of the United States shall appear on the ballot as provided in section 23-4301.

History: En. Sec. 91, Ch. 368, L. 1969.

23-3509. Printing of candidate's name and party designation on ballot—no party designation for candidates for supreme and district court judgeships—persons nominated by more than one party. (1) Candidates' names shall be printed in one place on the ballot with the name of the party or political organization, as found in the certificate of nomination in not more than three (3) words, printed opposite the name.

(2) The names of candidates for chief justice, associate justices, and district court judges shall be followed by: "Nominated without party designation."

(3) If a person is nominated for the same office by more than one (1) party, he shall file a written election with the officer with whom he filed his declaration of nomination in the time required to file the declaration. If he fails or neglects to file an election, no party designation shall be placed opposite his name.

History: En. Sec. 92, Ch. 368, L. 1969.

23-3510. Pastors to be printed and distributed where vacancy has been filled—election judges to affix. (1) If a vacancy occurs after the printing of the ballots but before election, and a person is nominated to fill the vacancy, the officer whose duty it is to have the ballots printed must print pasters containing the name of the new nominee and mail them to the election judges by registered letter.

(2) The election judges shall affix the pasters over the substituted name in the proper place on each ballot before it is given to the elector.

History: En. Sec. 93, Ch. 368, L. 1969.

23-3511. Arrangement of names—rotation on ballot. (1) The candidates' names shall be arranged alphabetically on the ballot according to surnames under the appropriate title of the respective offices.

(2) The candidates of the two (2) major parties shall appear on the ballot before and above candidates of minor parties and independent candidates.

(3) The parties whose candidates for governor, except independent candidates, received the highest number of votes at the next preceding four (4) general elections shall constitute the two (2) major political parties.

(4) If there is a tie in the number of first or second place votes, the determination shall be made by going back to enough preceding elections to break the tie and no further.

(5) All other candidates shall be designated as either independent candidates or as belonging to minor parties.

(6) If two (2) or more persons are candidates for election to the same office, the registrar shall divide the ballot forms into sets to provide a substantial rotation of the names of candidates as follows:

(a) He shall divide the whole number of ballot forms for the county into sets equal in number to the greatest number of candidates for any office;

(b) He shall arrange the sets so that the names of the candidates beginning with a form arranged in alphabetical order, are rotated by removing one (1) name from the top of the list for each office and placing the name or number at the bottom of the list for each successive set of ballot forms;

(c) For the purposes of rotation, the office of president and vice-president shall be considered as a group;

(d) No more than one (1) of the sets shall be used in printing the ballot for use in any one (1) precinct, and all ballots furnished for use in any precinct shall be identical;

(e) Candidates of the two (2) major parties shall be rotated so they appear on the ballot before and above any candidates of the minor parties or independent candidates.

History: En. Sec. 94, Ch. 368, L. 1969.

23-3512. Columns and material to be printed on ballot. (1) Each ballot shall contain three (3) categories with at least one (1) column for each category.

(2) At the head of the first column to the left shall be the words, "STATE AND NATIONAL," in boldface type, followed by a list of all candidates for state and national offices, including supreme court justices, district court judges, and members of the legislative assembly, and the list shall progressively continue to the top of the second column.

(3) Next shall be the words "COUNTY AND TOWNSHIP," in large boldface type and beneath the heading all candidates for county and township offices. The list shall progressively continue on to the top of the third column.

(4) Next shall be the words "INITIATIVES, REFERENDUMS, AND CONSTITUTIONAL AMENDMENTS," in boldface type, and listed there-

under shall be all proposed constitutional amendments and measures to be voted which do not involve the creation of any state levy, debt, or liability. If there are no such measures, this heading shall be eliminated.

(5) Following each except the last column, the words "VOTE IN THE NEXT COLUMN" shall appear.

(6) All measures involving the creation of a state levy, debt, or liability shall be submitted to the voters upon a separate official ballot.

(7) Each ballot shall be printed so that all the matters printed are equally apportioned among the three (3) categories as nearly as possible.

History: En. Sec. 95, Ch. 368, L. 1969.

23-3513. Order of placement. (1) The order of offices on the ballot in the first column designated "STATE AND NATIONAL," shall be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line, shall be the names and spaces for voting for candidates for president and vice-president. The names of candidates for president and vice-president for each political party shall be grouped together.

(b) United States senator;

(c) United States representative;

(d) Governor;

(e) Lieutenant governor;

(f) Secretary of state;

(g) Attorney general;

(h) State treasurer;

(i) State auditor;

(j) Railroad and public service commissioners;

(k) State superintendent of public instruction;

(l) Clerk of the supreme court;

(m) Chief justice of the supreme court;

(n) Associate justices of the supreme court;

(o) District court judges;

(p) State senators, members of the house of representatives.

If any offices are not to be elected, they shall not be designated but the order of offices to be filled shall maintain their relative positions.

(2) In the column designated, "COUNTY AND TOWNSHIP," the following order of placement shall be observed:

(a) Clerk of the district court;

(b) County commissioner;

(c) County clerk and recorder;

(d) Sheriff;

(e) County attorney;

(f) County auditor;

(g) Other offices in the order designated by the registrar.

(3) In the third column constitutional amendments shall be followed by referendum and initiative measures.

History: En. Sec. 96, Ch. 368, L. 1969.

23-3514. Blank space and margin. (1) Below the names of candidates for each office there must be enough blank spaces to contain as many written names of candidates as there are persons to be elected.

(2) There must be a margin on each side of at least one-half ($\frac{1}{2}$) inch in width, and a reasonable space between the names, so that the voter may clearly indicate the candidate for whom he wishes to cast his ballot.

History: En. Sec. 97, Ch. 368, L. 1969.

23-3515. Stub, size and contents. (1) The ballot shall be printed on the same leaf with a stub, and separated by a perforated stub.

(2) The stub shall extend the entire width of the ballot, and have instructions printed on it.

(3) Upon the face of the stub shall be printed, in type called brevier capitals, the following:

(a) "This ballot should be marked with an 'X' in the square before the names of each person or candidate for whom the elector intends to vote. The elector may write in blank spaces, or paste over another name, the name of a person for whom he wishes to vote, and vote by marking an 'X' in the square before the name."

(b) "If a ballot contains a constitutional amendment, or other question to be submitted to a vote of the people, it is voted on by marking an 'X' in the square before the amendment or question."

(4) On the back of the stub shall be printed or stamped by the registrar or other officer, the consecutive number of the ballot, beginning with number one (1) and increasing in regular numerical order to the total number of ballots required for the precinct.

History: En. Sec. 98, Ch. 368, L. 1969.

23-3516. Number of ballots to be provided for each precinct. (1) The registrar must provide each election precinct with sufficient ballots for the electors registered plus sufficient copies to cover destroyed ballots.

(2) The registrar shall keep a record in his office, showing the exact number of ballots that are delivered to the election judges of each precinct.

(3) In city elections the city clerk shall provide necessary ballots.

History: En. Sec. 99, Ch. 368, L. 1969.

23-3517. Short-term and long-term elections for same office—order of offices on ballot. (1) If there is a short-term and a long-term election for the same office, the long-term office shall precede the short-term.

(2) Above each group of candidates for each office shall be printed the words designating the particular office in boldface capital letters and directly underneath the words, "VOTE FOR," followed by the number to be elected to such office.

(3) The ballot shall be in a form prescribed by the secretary of state.

History: En. Sec. 100, Ch. 368, L. 1969.

CHAPTER 36

CONDUCT OF ELECTIONS—THE POLLS—VOTING AND BALLOTS

- Section
- 23-3601. Instruction cards, printing, distribution, posting and contents of—display of official ballots.
- 23-3602. Proclamation prior to opening and closing polls.
- 23-3603. Delivery of official ballots to elector.
- 23-3604. Sufficient booths to be provided—only one person to occupy booth—may be ejected after occupying booth for unreasonable time.
- 23-3605. Prohibited conduct.
- 23-3606. Method of voting.
- 23-3607. No person except election judge to put ballot or other object in a ballot box—penalty.
- 23-3608. Putting ballot in box.
- 23-3609. Judges may aid disabled elector.
- 23-3610. Marking precinct register book before elector votes—procedure.
- 23-3611. Grounds of challenge.
- 23-3612. Proceedings on challenger for want of identity, having voted before, and conviction of felony.
- 23-3613. Challenges, how determined.
- 23-3614. If a person refuses to be sworn, vote to be rejected.
- 23-3615. Trial of challenges.
- 23-3616. Proceedings upon determination of challenges.
- 23-3617. List of challenges to be kept.
- 23-3618. Poll watchers—announcement of voter's name.

23-3601. Instruction cards, printing, distribution, posting and contents of—display of official ballots. (1) The registrar shall print on cards instructions to electors on how to vote.

(2) He shall furnish six (6) cards to the election judges in each precinct and one (1) additional card for each fifty (50) registered electors or fractional part of fifty (50) at the same time ballots are furnished.

(3) The election judges shall post at least one (1) card in each compartment provided for the preparation of ballots, and not less than three (3) of the cards elsewhere about the polling place.

(4) The cards shall contain instructions in bold large type:

- (a) On how to obtain ballots for voting;
- (b) On how to prepare ballots for deposit in the ballot box;
- (c) On how to obtain a new ballot in place of one spoiled by accident;
- (d) A copy of sections 94-1407, 94-1411, 94-1412, 94-1413, 94-1414, and 94-1415, R. C. M. 1947.

(5) Official ballots provided for in chapter 35 of this act shall be posted in each booth or compartment and in three (3) conspicuous places about the polling place.

History: En. Sec. 101, Ch. 368, L. 1969. ence to "chapter 35" for a reference to "chapter 6" in subsection (5).

Compiler's Notes

The compiler has substituted the refer-

23-3602. Proclamation prior to opening and closing polls. Before the polls are opened or closed that fact must be proclaimed at the place of election.

History: En. Sec. 102, Ch. 368, L. 1969.

23-3603. Delivery of official ballots to elector. (1) The election judges must designate two (2) of their number to deliver ballots to electors.

(2) Before delivery, the election judges shall stamp the words "official ballot" on the back and near the top of the ballot. They shall also stamp other words required by section 23-3503.

(3) The election clerks shall enter on the poll lists the name of the elector and the number of the stub attached to the ballot given him.

(4) Each elector shall receive one (1) ballot from the election judges.

History: En. Sec. 103, Ch. 368, L. 1969.

Stamping of Official Ballot

Where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, al-

though in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub—thus leaving the ballot without the stamp—did not render the ballot void. *Harrington v. Crichton*, 53 M 388, 164 P 537.

23-3604. Sufficient booths to be provided—only one person to occupy booth—may be ejected after occupying booth for unreasonable time. (1) All officers who designate polling places shall:

(a) Provide in each polling place a sufficient number of booths. The officers must furnish each booth with a door or curtain to screen the voter from observation;

(b) Furnish the booths adequately to enable the elector to prepare his ballot;

(c) Furnish at least one (1) booth for every fifty (50) electors registered in the precinct.

(2) No more than one (1) person may occupy a booth at one (1) time, and no person may occupy a booth longer than is reasonably necessary to prepare his ballot, after which the election judges may eject him.

History: En. Sec. 104, Ch. 368, L. 1969.

23-3605. Prohibited conduct. (1) An election officer shall not do any electioneering on election day.

(2) A person shall not do any electioneering on election day, within any polling place, in any building in which an election is being held, or within two hundred (200) feet of the building where the polling place is located.

(3) A person shall not obstruct the entries to a polling place.

(4) An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, and arrest any person obstructing the passageway to a polling place.

(5) A person shall not remove a ballot from the polling place before the closing of the polls.

(6) A person shall not show the contents of his ballot to any other person after it is marked.

(7) A person shall not solicit the elector to show the contents of his ballot; nor shall any person, except the election judge, receive from any elector a ballot prepared for voting.

(8) An elector shall not receive a ballot from any other person than one of the election judges, nor shall any person other than an election judge deliver a ballot to an elector.

(9) An elector shall not vote any ballot except one received from the election judges.

(10) An elector shall not place any mark upon his ballot by which it may be identified as the one voted by him.

(11) An elector who does not vote a ballot delivered to him shall, before leaving the polling place, return the ballot to the election judges.

History: En. Sec. 105, Ch. 368, L. 1969.

Electioneering by election officials, penalty, 94-1413.

Cross-References

Disclosing contents of ballot after marking, penalty, 94-1414.

Solicitation of votes on election day, sec. 94-1453.

23-3606. Method of voting. (1) On receipt of his ballot, the elector must immediately retire to one of the booths and prepare his ballot.

(2) He shall prepare his ballot by marking an "X" in the square before the name of the person or persons for whom he intends to vote.

(3) If the ballot contains a constitutional amendment, or other question to be submitted to the vote of the people, he shall mark an "X" in the applicable square indicating his vote either for or against the amendment or question.

(4) The elector may write in the blank spaces, or paste over any other name, the name of any person for whom he wishes to vote, and vote for that person by marking an "X" before the name.

(5) After preparing his ballot the elector must fold it so the face of the ballot will be concealed and the endorsements may be seen, and hand it to the election judges who shall announce the name of the elector and the printed or stamped number on the stub in a loud tone of voice. The judge must announce the voter's name and record the name in the pollbook. If the voting is in a city, the voter's residence shall also be announced and recorded in the pollbook.

(6) If the elector is entitled to vote, and if the printed or stamped number is the same as that entered on the pollbooks as the number on the stub, the judge shall receive the ballot, and remove the stub in sight of the elector depositing each ballot in the ballot box and each stub in a box for detached ballot stubs.

(7) Any elector who spoils his ballot may, on returning the spoiled ballot, receive another in place of it.

History: En. Sec. 106, Ch. 368, L. 1969.

voter is not to be disfranchised by the errors or wrongful acts of election officers. *Carwile v. Jones*, 38 M 590, 599, 101 P 153.

Deposit of Ballot

Act of voting is not completed until the ballot is deposited in the ballot box. *Goodell v. Judith Basin County*, 70 M 222, 233, 224 P 1110.

Error by Election Officer

A ballot properly marked, but from which the stub has not been detached by the ballot judge, should be counted; a

Marking of Ballot

In an election contest, the court properly refused to count for a candidate ballots marked as follows: (1) Where the cross was placed after the candidate's name and entirely without his party column; (2) where perpendicular lines were

drawn through the names in one party column, but no cross was placed before the candidate's name; and (3) where his name was written in one party column, but no cross marked in the square before the name. In neither instance was there substantial, nor any, compliance with the provisions of predecessor section. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

In an election contest, the court properly refused to count a ballot for a candidate which was marked by crossing out all the names in other party columns, but which failed to show an "X" before his name. While the intention of the voter is generally a very material consideration, he must express his intention substantially as indicated by the statute. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

Where the crossmark was placed after the candidate's name but within his party column, the ballot was void, since the elector did not substantially comply with the requirement of prior section relative to placing the mark before the name. *Carwile v. Jones*, 38 M 590, 595, 101 P 153.

Any mark within the square before the candidate's name, which can be said to be a crossing of two lines, will answer the requirements of the statute that the elector must place an "X" in such square; and in the absence of anything to indicate a purpose on his part to identify his ballot by the use of a third line within

the square, a defect in the mark is not sufficient to vitiate the ballot. *Carwile v. Jones*, 38 M 590, 595, 101 P 153, explained in 109 M 390, 393, 396, 96 P 2d 922.

Statutory provision that a ballot should be marked by an "X" in the square is directory and not mandatory, and in the absence of a further provision that unless so marked the ballot shall not be counted, a ballot upon which the elector marked all squares with a check mark (✓) instead of an "X" should have been counted for contestant, there being nothing to indicate an attempt to mark the ballot for identification purposes. *Peterson v. Billings*, 109 M 390, 395, 96 P 2d 922.

Voting an Affirmative Act

The casting of a ballot at an election of public officers is an affirmative, not a negative, act—an act done with intention of voting for someone; hence if it is the purpose of voters to defeat a certain candidate, that purpose can be accomplished only by voting for some person in opposition to him, and not by voting for a person who died some weeks before election with the expectation that the vote cast for him would be counted as opposed to the person sought to be defeated; one who has died is no longer a person for whom, under section 2, article IX of the constitution, a voter may cast his ballot. *State ex rel. Wolff v. Geurkink*, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

23-3607. No person except election judge to put ballot or other object in a ballot box—penalty. No person, except an election judge shall put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box. A person violating this section is guilty of a misdemeanor. An election judge who knowingly permits a violation of this act is guilty of a felony.

History: En. Sec. 107, Ch. 368, L. 1969.

23-3608. Putting ballot in box. If the name of an elector appears in the official register of the precinct, or if the person offering to vote produces a proper registry certificate and his vote is not rejected upon a challenge, the election judge must immediately and publicly in the presence of all the judges, place the ballot in the ballot box without opening or examining it.

History: En. Sec. 108, Ch. 368, L. 1969.

23-3609. Judges may aid disabled elector. (1) The election judges shall aid an elector, who because of physical disability or inability to read or write, needs assistance in marking his ballot.

(2) The elector shall be assisted by two (2) judges who represent different parties. The disabled elector may request that a qualified elector he designates also aid him in voting. The election judges must certify on the official

register opposite the disabled elector's name that the ballot was marked with their assistance and the name of any other elector designated. Neither the judges nor a person who aided the elector may reveal information regarding the ballot.

(3) The election judges shall require the declaration of disability by the elector under oath. They are authorized to administer the oath.

(4) No elector, other than the one who is unable to vote, may divulge to anyone within the polling place the name of any candidate for whom he intends to vote, or ask or receive the assistance of any person within the polling place in the preparation of his ballot.

(5) Instead of assistance, as provided in subsection (2) of this section, the elector may request the assistance of any qualified elector whom he designates to the judges to aid him in the marking of his ballot, and the judges must certify on the official register opposite the name of such disabled elector that it was so marked with their assistance.

History: En. Sec. 109, Ch. 368, L. 1969.

Evidence

Where it appeared in an election contest that a voter's ballot had been endorsed by the judges of election, as required by law, it was necessary to show that it could not thereby be identified, in order to let in, as secondary evidence, testimony as to how he voted. *Lane v. Bailey*, 29 M 548, 560, 75 P 191.

Need Not Certify Reason for Assistance

A ballot bearing the endorsement:

"Voted by H. and M. (judges election) for illegibility of voter," was not void on the ground that the reason given for assisting the voter was not one recognized by law, since section does not require the judges to certify the reason for assisting an elector, and the words "for illegibility of voter" were therefore surplusage; and in the absence of a showing why they gave assistance, it will be presumed that they regularly performed their official duties. *Carwile v. Jones*, 38 M 590, 599, 101 P 153.

23-3610. Marking precinct register book before elector votes—procedure. (1) The election judges at every general or special election shall, in the precinct register book, mark a cross (X) upon the line opposite to the name of the elector.

(2) Before an elector is permitted to vote, the election judges shall require the elector to sign his name on the place designated in the precinct register.

(3) The election judges shall require an elector not able to sign his name to produce two (2) electors who shall make an affidavit before the election judges, or one (1) of them, in a form prescribed by the secretary of state.

(4) The affidavit shall be filed by the election judges, and returned to the registrar with the returns of the election. One (1) of the judges shall write the elector's name, note the fact of his inability to sign, and the names of the two (2) electors.

(5) If the elector fails or refuses to sign his name, and if unable to write fails to procure two (2) electors who will take the oath required, he shall not be allowed to vote.

(6) Immediately after the canvass of the returns, the election judges shall deliver to the registrar the official register, sealed, with the election returns and pollbook which have been used for the election.

(7) Each precinct shall keep a list of persons voting, and the name of each person who votes shall be entered in it and numbered in the order voting. This list is known as the pollbook.

History: En. Sec. 110, Ch. 368, L. 1969.

23-3611. Grounds of challenge. A person offering to vote may be orally challenged by any elector of the county, upon the following grounds:

(1) That he is not the person whose name appears on the register or checklist;

(2) That he has been adjudicated insane or is confined to a state institution;

(3) That he has voted before that day;

(4) That he has been convicted of a felony and has not been pardoned.

History: En. Sec. 111, Ch. 368, L. 1969.

Cross-References

Challenges at nominating elections, sec. 94-1446.

23-3612. Proceedings on challenges for want of identity, having voted before, and conviction of felony. (1) If the challenge is on the ground that the person is not the person whose name appears on the official register, the election judges shall administer the following oath: "You do swear (or affirm) that you are the person whose name is entered on the official register and precinct list."

(2) If the challenge is on the ground that the person has voted before that day, the judges shall administer this oath: "You do swear (or affirm) that you have not before voted this day."

(3) If the challenge is on the ground that the person has been convicted of a felony, the judges shall administer the following oath: "You do swear (or affirm) that you have not been convicted of a felony."

History: En. Sec. 112, Ch. 368, L. 1969.

23-3613. Challenges, how determined. (1) Challenges on the grounds that the person is not the person whose name appears on the official register or that the person has before voted that day are determined in favor of the person challenged by his taking the oath tendered.

(2) A challenge that the person has been convicted of a felony and not pardoned must be determined in favor of the challenged on his taking the oath tendered, unless the conviction is proved by producing an authenticated copy of the record, or by oral testimony of two (2) witnesses.

(a) If a person convicted of a felony states he was pardoned, he must exhibit his pardon or certified copy to the election judges.

(b) If the pardon is found sufficient, the election judges shall administer this oath: "You do swear (or affirm) that you have not been convicted of any felony other than that for which a pardon is now exhibited."

(c) After taking the oath, the person must be allowed to vote if otherwise qualified, unless a conviction of some other felony is proved.

History: En. Sec. 113, Ch. 368, L. 1969.

23-3614. If a person refuses to be sworn, vote to be rejected. If a person challenged refuses to take the oath tendered, or refuses to be sworn

and to answer the questions touching the matter of residence, he shall not be allowed to vote.

History: En. Sec. 114, Ch. 368, L. 1969.

23-3615. Trial of challenges. Challenges for causes other than those specified in this chapter must be tried and determined by the election judges at the time of the challenge.

History: En. Sec. 115, Ch. 368, L. 1969.

23-3616. Proceedings upon determination of challenges. If the challenge is determined against the person offering to vote, the ballot shall, without examination, be destroyed by the election judges in the presence of the person offering the challenge. If determined in his favor, the ballot must be deposited in the ballot box.

History: En. Sec. 116, Ch. 368, L. 1969.

23-3617. List of challenges to be kept. The election judges shall require each election clerk to keep a list showing:

- (1) The names of all persons challenged;
- (2) The grounds of each challenge;
- (3) The determination of the election judges upon the challenge.

History: En. Sec. 117, Ch. 368, L. 1969.

23-3618. Poll watchers—announcement of voter's name. The election judges shall permit one (1) poll watcher from each political party to station himself close to the poll lists in a location that does not interfere with election procedures. At the time that each elector signs his name, one (1) of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers shall also be permitted to observe all of the vote-counting procedures of the judges and all entries of the results of the elections.

History: En. Sec. 118, Ch. 368, L. 1969.

CHAPTER 37

ABSENTEE VOTING AND REGISTRATION

Section

- 23-3701. Voting by elector when absent from place of residence or physically incapacitated from going to polls.
- 23-3702. Forms and rules for absentee voting in school district elections.
- 23-3703. Application of absentee or physically incapacitated person for ballot.
- 23-3704. Form of application—affidavit—manner.
- 23-3705. Transmission of application to county clerk—delivery of ballot.
- 23-3706. Mailing ballot to elector—affidavit—electors in the United States service.
- 23-3707. Marking and swearing to ballot by elector.
- 23-3708. Disposition of marked ballot upon receipt by registrar or clerk.
- 23-3709. Delivery of ballots to election judges—ballots to be rejected—ballots not to count.
- 23-3710. Registrar or clerk to keep record of ballots and issue certificate.
- 23-3711. Duty of election judges—pollbooks, numbering ballots and rejected ballots.
- 23-3712. Voting before election day by prospective absentee or physically incapacitated elector.

- 23-3713. Envelopes containing ballots—deposit in box and rejection of ballot.
- 23-3714. Elector whose absentee ballot has been rejected as defective may vote in person.
- 23-3715. Opening of envelopes after deposit.
- 23-3716. Voting machines—canvass of votes.
- 23-3717. False swearing perjury—official misconduct a misdemeanor.
- 23-3718. “Elector in the United States service” defined.
- 23-3719. Registration of absent electors in United States service.
- 23-3720. Oath for elector in United States service.
- 23-3721. Classification of federal post card application.
- 23-3722. Method of registration of voter absent from county.
- 23-3723. Registration card mailed upon application.

23-3701. Voting by elector when absent from place of residence or physically incapacitated from going to polls. A qualified registered elector who will be absent from the county or physically incapacitated and unable to go to the polls on the day of election may vote as provided in sections 23-3701 through 23-3723.

History: En. Sec. 119, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Constitutionality

Prior Absent Voters Law was valid enactment and did not violate section 2, article IX of the state constitution, which provides that an elector “shall have re-

sided in the state one year immediately preceding this election at which he offers to vote.” *Goodell v. Judith Basin County*, 70 M 222, 227, 224 P 1110.

23-3702. Forms and rules for absentee voting in school district elections. The state superintendent of public instruction shall prepare the form of application for absentee ballots and other forms necessary for school district elections and may make necessary rules to carry out the purpose of this chapter as it pertains to school districts.

History: En. Sec. 120, Ch. 368, L. 1969.

23-3703. Application of absentee or physically incapacitated person for ballot. During a period beginning forty-five (45) days before the day of an election and ending at 12 noon on the day before the election, an elector expecting to be absent from the county in which his voting precinct is situated, an elector in United States service, or an elector who will be unable to go to the polls because of physical incapacity may apply to the registrar or city clerk for an absentee ballot.

History: En. Sec. 121, Ch. 368, L. 1969.

23-3704. Form of application—affidavit—manner. (1) Application for absentee ballots shall be made on a form furnished by the registrar of the county of which the applicant is an elector, the city clerk, or clerk of a first class school district. The form shall be prescribed by the secretary of state except as provided in section 23-3702.

(2) The applicant shall subscribe the application and swear to it before an officer authorized to administer oaths. The application is not complete without this affidavit.

(3) Application for an absentee ballot may be made by any elector in the United States service by the federal post card application or by any

written request signed by the applicant, addressed to the registrar of the applicant's residence.

History: En. Sec. 122, Ch. 368, L. 1969.

23-3705. Transmission of application to county clerk—delivery of ballot.

(1) The elector shall forward the application by mail or deliver it in person to the registrar.

(2) The registrar shall compare the signature on the application with the applicant's signature on the registration card. If convinced the person making the application is the same as the one whose name appears on the registration card, he shall deliver the ballot.

History: En. Sec. 123, Ch. 368, L. 1969.

23-3706. Mailing ballot to elector—affidavit—electors in the United States service. (1) Either upon receipt of the application or immediately after the official ballot for the precinct of the applicant's residence has been printed, the registrar, city clerk, or clerk of a first class school district shall send by mail, postage prepaid, whatever official ballots are necessary.

(2) The proper officer shall enclose an envelope with the ballots which has written on the front the name, title, and post-office address of the officer sending it, and upon the other side a printed affidavit in a form prescribed by the secretary of state.

(3) Both the envelope in which the ballot is mailed to an elector in the United States service and the return envelope shall have printed across the face two parallel horizontal red bars, each one-quarter ($\frac{1}{4}$) inch wide, extending from one side of the envelope to the other, with an intervening space of one-quarter ($\frac{1}{4}$) inch, with the words "Official Election Ballot Material—via Air Mail," between the bars. In the upper right-hand corner shall be printed "Free of U.S. Postage." In the upper left-hand corner shall be blanks sufficient for the recipient to place his return address. All printing on the face of the envelope shall be in red.

(4) The return address shall be self-addressed to the registrar or city clerk.

(5) Instructions for voting shall be enclosed with the ballots for electors in the United States service.

History: En. Sec. 124, Ch. 368, L. 1969.

Improper Delivery

Absent voter's ballot delivered by county clerk not to electors personally or by mail, but to one engaged in procuring

electors to apply therefor and request that such ballots be delivered to such person, were void and could not be voted at ensuing election. State ex rel. Van Horn v. Lyon, 119 M 212, 173 P 2d 891, 895.

23-3707. Marking and swearing to ballot by elector. (1) The elector shall complete the affidavit before an officer authorized by law at the place of execution to administer oaths.

(2) The elector shall mark each ballot in the presence of the officer only, in a manner so the officer cannot see the vote.

(3) The ballot shall be folded by the elector to conceal the vote in the presence of the officer and the elector shall, in the officer's presence, place it in the envelope and seal it.

(4) The officer shall sign at the end of the certificate and affidavit.

(5) The elector shall mail the envelope, postage prepaid, or deliver it to the registrar, city clerk, or clerk of a first class school district.

History: En. Sec. 125, Ch. 368, L. 1969.

23-3708. Disposition of marked ballot upon receipt by registrar or clerk.

(1) Upon receipt of the envelope, the registrar, city clerk, or clerk of a first class school district shall immediately enclose it in a larger envelope, together with the elector's application and seal it.

(2) The registrar, city clerk, or clerk of a first class school district shall safely keep it in his office until delivered or mailed by him.

History: En. Sec. 126, Ch. 368, L. 1969.

23-3709. Delivery of ballots to election judges—ballots to be rejected—ballots not to count. (1) If the absentee ballot is received prior to delivery of the official ballots to the election judges, the registrar or clerk shall deliver the larger envelope to the judges at the same time the ballots are delivered.

(2) If absentee ballots are received after the ballots are delivered to the election judges, the registrar or clerk shall immediately deliver the larger envelopes by mail postage prepaid to the judges.

(3) If absentee ballots are received by the registrar or clerk for which application was not received prior to 12 noon on the day preceding an election, the clerk shall endorse upon the voter's envelope the date and exact time of receipt and the words "To be rejected." Absentee ballots so endorsed shall be delivered to the election judges of the precinct and shall be rejected.

(4) If an elector votes absentee ballot and dies between the time of balloting and election day, his ballot will not count.

History: En. Sec. 127, Ch. 368, L. 1969.

23-3710. Registrar or clerk to keep record of ballots and issue certificate. (1) The absentee ballots delivered shall be regular official ballots beginning with ballot number one (1) and following consecutively, according to the number of applications for absentee ballots.

(2) The registrar, city clerk, or school district clerk shall keep a record of all absentee ballots delivered, as well as of ballots marked before him.

(3) The registrar, city clerk, or school district clerk shall deliver to the election judges to whom the ballots are delivered a certificate stating the number of absentee ballots delivered as well as those marked before him, and the names of the voters to whom such ballots are delivered, or by whom they have been marked if marked before him.

History: En. Sec. 128, Ch. 368, L. 1969.

23-3711. Duty of election judges—pollbooks, numbering ballots and rejected ballots. (1) The election judges, at the opening of the polls, shall note on the pollbooks opposite the numbers corresponding to the

number of absentee ballots issued the fact that the ballots were issued and reserve the numbers for the absent or physically incapacitated voters. The notation may be made by writing the words "absent or physically incapacitated voters" opposite the numbers.

(2) The election judges shall insert only the names of the elector entitled to each particular number according to the certificate of the registrar or city clerk and the number of his ballot.

(3) Any absentee ballots which have been rejected shall be placed with the voter's application and the absent or physically incapacitated voter's envelope furnished by the registrar or city clerk.

(a) This envelope shall be sealed and endorsed by the words, "rejected absentee ballots," numbered, and shall put on it the number of the absentee ballots given according to the registrar's or city clerk's certificates.

(b) There shall be a separate enclosing envelope for the absentee ballots rejected, and the envelopes shall be placed in an envelope together with other ballots, and shall not be opened without a court order.

History: En. Sec. 129, Ch. 368, L. 1969.

23-3712. Voting before election day by prospective absentee or physically incapacitated elector. (1) An elector who is present in his county after the official ballots of his county or school district have been printed who has reason to believe that he will be absent from the county or school district or physically incapacitated on election day, may vote before election day before the registrar, city clerk, or school district clerk, or some officer authorized to administer oaths and having the official seal.

(2) The provisions of this chapter apply to such voting.

(3) If the ballot is marked before the registrar, city clerk, or school district clerk, he shall deal with it in the same manner as if it had come by mail.

History: En. Sec. 130, Ch. 368, L. 1969.

23-3713. Envelopes containing ballots—deposit in box and rejection of ballot. (1) While the polls are open on election day, the election judges shall first open the outer envelope only, and compare the signature of the voter on the application and on the affidavit.

(2) If the election judges find that the signatures correspond, that the affidavit is sufficient, and that the absentee elector is qualified and has not yet voted, they shall open the absentee voter's envelope and take out the ballot or ballots and, without unfolding it or permitting it to be examined, ascertain whether the stub is still attached and whether the number corresponds to the number in the certificate of the registrar or city clerk.

(3) If so, they shall endorse it the same way that other ballots are endorsed, detach the stub, deposit the ballots in the proper ballot boxes, and make entries in their election records to show the elector has voted.

(4) If the affidavit is found defective, the numbers do not correspond, or the voter is unqualified, the election judges, without opening the absentee ballot, shall mark across the face of it "rejected as defective" or "rejected as not an elector."

(5) The absentee ballot envelope, when it has been voted or rejected, shall be deposited in the ballot box containing the general or party ballots, and shall be retained and preserved in the manner provided for official ballots.

(6) If, upon opening the absentee ballot envelope, it is found that the stub of any ballot has been detached, or that the number does not correspond to the number on the certificate of the registrar or clerk, the ballot shall be rejected. It shall be marked on back as "rejected for" filling the blank with the reason. This statement shall be dated and signed by a majority of the election judges.

(7) The rejected ballots, together with the absentee ballot envelope bearing the application shall be enclosed in an envelope, sealed, and the judges shall write on the envelope, "rejected ballot of absentee voter" (writing in the elector's name). "The rejected ballot(s) is (are)"

(8) The election judges shall designate the rejected ballot as "general ballot," if it is a ballot for candidates that are rejected.

(9) If the rejected ballot is on a question submitted to the vote of the electors, the judges shall designate it as ballot question No. in the certificate on the envelope.

(10) A separate enclosing envelope shall be used for each absentee ballot rejected. This envelope shall be placed in the envelope in which the other ballots voted are required to be placed and shall not be opened without a court order.

(11) The registrar or clerk shall provide and deliver to the election judges suitable envelopes for enclosing rejected absentee ballots.

History: En. Sec. 131, Ch. 368, L. 1969.

Voting Accomplished

Voting is accomplished not merely by marking the ballot, but by having it delivered to the election officials and de-

posited in the ballot box before the closing of the polls on election day, and this is equally true for absent voters. *Maddox v. Board of State Canvassers*, 116 M 217, 223, 149 P 2d 112.

23-3714. Elector whose absentee ballot has been rejected as defective may vote in person. If the envelope containing the absentee ballot has been marked "rejected as defective" and deposited in the ballot box, the elector appearing has the same right to vote as if he had not attempted to vote as an absent or physically incapacitated voter. If voting machines are used, he shall vote by machine as other voters.

History: En. Sec. 132, Ch. 368, L. 1969.

23-3715. Opening of envelopes after deposit. If an envelope containing an absentee ballot has been deposited unopened in the ballot box, the envelope shall be opened without a court order and the ballot cast.

History: En. Sec. 133, Ch. 368, L. 1969.

23-3716. Voting machines—canvass of votes. (1) In precincts where voting machines are used, the registrar, city clerk, or clerk of a school district shall print and provide ballots in official form for possible absent or physically incapacitated voters, and also pollbooks and ballot boxes required for precincts in which printed ballots are used.

(2) Absentee ballots received in those precincts shall be handled as provided in this chapter.

(3) In making the official canvass, the votes cast by absentee ballot shall be added to the votes cast on the voting machines.

History: En. Sec. 134, Ch. 368, L. 1969.

23-3717. False swearing perjury—official misconduct a misdemeanor.

(1) If a person willfully swears falsely to any affidavit he is guilty of perjury.

(2) If the registrar, clerk, or any election officer:

(a) Refuses or neglects to perform any duties prescribed by this act,

(b) Makes false statements in his certificate regarding affidavits,

(c) Looks at any marks made by the voter upon the ballot,

(d) Allows any person other than the voter to be present at the marking of such ballot,

(e) Sees any marks made by the voter on the ballot, he is guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars (\$500), imprisoned in the county jail for not more than six (6) months, or both.

History: En. Sec. 135, Ch. 368, L. 1969.

23-3718. "Elector in the United States service" defined. "Elector in the United States service" means:

(1) A member of the armed forces in the active service, and his spouse and dependents;

(2) A civilian employee of the United States in all categories serving outside the territorial limits of the several states of the United States or in the District of Columbia and his spouse and dependents when residing or accompanying him;

(3) A member of a religious group or welfare agency assisting members of the armed forces of the United States who are officially attached to and serving the armed forces, and his spouse and dependents.

History: En. Sec. 136, Ch. 368, L. 1969.

23-3719. Registration of absent electors in United States service. (1)

An elector in United States service who is absent from the state is entitled to register by mailing to the registrar a federal post card application filled out and signed under oath.

(2) The form of the federal post card application, which may be used both as an application for registration and for a ballot, shall be prescribed by the secretary of state.

History: En. Sec. 137, Ch. 368, L. 1969.

23-3720. Oath for elector in United States service. (1) Any oath required for electors in the United States service to register, request a ballot, or vote, may be administered and attested, within or without the United States, by any commissioned officer in active service, or any civilian official empowered by state or federal law to administer oaths.

(2) No official seal is required to be affixed to the oath and neither the elector nor the certifying officer need disclose his whereabouts at the time of taking the oath except to the extent required by the federal post card application.

History: En. Sec. 138, Ch. 368, L. 1969.

23-3721. Classification of federal post card application. (1) Upon receipt by the registrar of a federal post card application properly filled out and signed under oath, the registrar shall classify the application according to the precinct in which the elector resides and arrange the cards in each precinct in alphabetical order.

(2) The registrar shall, upon receipt of any federal post card application, immediately enter upon the official register of the county in the proper precinct the full information given by the elector.

(3) If an elector in the United States service has not already requested an absentee ballot, the registrar shall, immediately upon entry in the official registry of the name of the elector send to him by the fastest mail service available a notice that he has been registered and informing him that in order to secure a ballot he must mail at any time within forty-five (45) days preceding the election another federal post card application to his registrar or city clerk.

History: En. Sec. 139, Ch. 368, L. 1969.

23-3722. Method of registration of voter absent from county. (1) An elector who is unable to make personal application for registration by reason of being absent from the county, may register to vote prior to the close of registration before any election, by appearing, executing and verifying under oath, before a notary public or other officer empowered to administer oaths, at any place within the United States, a registration card as provided in sections 23-3701 through 23-3723.

(2) He must return the card in sufficient time to reach the registrar before the close of registration.

(3) The elector's name may not be entered in the official register until at least two (2) registered electors of the county in which the elector desiring to be registered has his place of residence as stated in his application for registration, appear before the registrar and make affidavits in writing, stating that they are personally acquainted with the applicant, are familiar with and know his signature, and have seen him write and that the signature subscribed to the application or [for] registration is the signature of the elector.

History: En. Sec. 140, Ch. 368, L. 1969.

23-3723. Registration card mailed upon application. (1) The registrar of the county of the elector's legal residence shall furnish to any elector applying, whether application be made by mail, telegram or telephone, a registration card.

(2) The card shall be sent postage prepaid by the registrar to the address furnished by the elector at the time of making his application.

History: En. Sec. 141, Ch. 368, L. 1969.

CHAPTER 38

VOTING MACHINES

Section

- 23-3801. Voting machines—secretary of state.
- 23-3802. Specifications of machines required.
- 23-3803. Providing voting machines—payment.
- 23-3804. Preparation of machines for use.
- 23-3805. Write-in ballots.
- 23-3806. Placement of machines—time voter to remain in booth—election board make-up.
- 23-3807. Registrar to instruct election judges.
- 23-3808. Publication of information concerning machines.
- 23-3809. Voting machine to be exhibited.
- 23-3810. Furnishing samples and supplies.
- 23-3811. Registry lists—provision for number of each ballot.
- 23-3812. Assistance to illiterate, blind or physically disabled voters.
- 23-3813. Counting the votes.
- 23-3814. Procedure after count is ascertained.
- 23-3815. Disposition of write-in ballots and tally sheets.
- 23-3816. Return sheets—contents.
- 23-3817. Experimental use of machines.
- 23-3818. Machine breakdowns—electors may vote by paper ballot upon request.
- 23-3819. Use of separate paper ballots for voting on certain money issues where machines do not allow proper lockout.
- 23-3820. Penalty for tampering with or injuring machines.
- 23-3821. Penalty for fraudulent returns or certificates.
- 23-3822. Applicability of election laws in general where not in conflict with this chapter.

23-3801. Voting machines—secretary of state. (1) Before any voting machine can be used, the secretary of state shall:

(a) Examine the machine to determine if it complies with the requirements of sections 23-3801 through 23-3822.

(b) Within thirty (30) days after examining a machine, file a report in his office on each machine examined;

(c) Within five (5) days after filing the report, transmit to the commissioners, city council, or other board having control of elections in each county or city a list of the machines approved.

(2) A machine shall not be used unless approved by the secretary of state sixty (60) days or more prior to the election.

(3) The secretary of state may employ qualified mechanics who are electors to assist him in duties required by this chapter and compensate them.

(4) The person or company submitting a machine for examination before the filing of the report shall pay the compensation and expenses of mechanics connected with the examination to the secretary of state for deposit in the state general fund.

History: En. Sec. 142, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Constitutionality

Prior voting machine law was not invalid as in contravention of section 1, article IX of the constitution of Montana which provided that all elections shall be "by ballot"; the term "ballot" be-

ing employed not to designate a piece of paper, but a method to ensure, so far as possible, the secrecy and integrity of the popular vote. State ex rel. Fenner v. Keating, 53 M 371, 377, 163 P 1156.

23-3802. Specifications of machines required. (1) A machine or machine system may not be approved unless:

- (a) An elector can vote in secrecy as he is entitled to vote by law;
- (b) An elector is prevented from voting for any candidate or upon any question more than once and is also prevented from voting for any person or on any proposition, if he is not entitled to vote;
- (c) An elector can vote a split ticket if he desires;
- (d) Every vote cast is registered and recorded.

(2) The candidates for president and vice-president shall appear on the machine ballot. Presidential electors shall not appear on the machine.

(3) The machine or machine system must be constructed so that it cannot be tampered with for a fraudulent purpose and must also be constructed so that during the progress of the voting no person can see or know the number of votes registered for any candidate or on any proposition.

History: En. Sec. 143, Ch. 368, L. 1969.

Tampering with Machine

Act does not require a voting machine which will be proof against all tampering or manipulation, but one which, when honestly operated, will enable an elector to secretly cast his vote as he wishes to

cast it and have it counted as cast, and which cannot be tampered with or manipulated in such a way that, though properly operated by the elector, it would seem to receive and record his vote without doing so. State ex rel. Fenner v. Keating, 53 M 371, 381, 163 P 1156.

23-3803. Providing voting machines — payment. (1) Commissioners and councils may provide approved voting machines as practicable.

(2) Not later than September 10, prior to a general election, the commissioners or council of a city may unite two (2) or more precincts to use a voting machine. Notice of the consolidation shall be given as provided by law for the change of election districts.

(3) Funds for voting machines may be provided by interest-bearing bonds, certificates of indebtedness, or other obligations. The term of the bonds, certificates, or other obligations may not exceed ten (10) years and they shall not be issued or sold at less than par.

History: En. Sec. 144, Ch. 368, L. 1969.

23-3804. Preparation of machines for use. (1) The registrar or city clerk shall put the proper ballots upon each voting machine corresponding with the sample ballots. The registrars or city clerks shall also:

- (a) Set, adjust, and put the machines in order;
- (b) Deliver the machines to the precincts together with necessary furniture and appliances;
- (c) Place a shield painted black and marked "not in use" over the keys or levers not in use on the voting machine.

(2) In primary elections a separate row or column shall be assigned to each political party and at least one (1) row shall separate the rows assigned to the two (2) major political parties. This row shall be used for the nonpartisan judicial ballot.

(3) In general elections the ballot shall be arranged and the names of the candidates rotated to conform as nearly as possible to the requirements for paper ballots.

(4) Candidates of the two (2) major parties shall be rotated between the first two (2) horizontal rows or vertical columns, and candidates of minor parties and independent candidates shall be rotated between succeeding rows or columns.

(5) The party designation of each candidate shall appear below his name in type as large as machine design will allow.

(6) The judicial ballot shall appear in the first two (2) horizontal or vertical rows or columns as prescribed by section 23-3513.

(7) The election judges shall compare the ballots on the machine with sample ballots, ensure that all counters are set at zero and the machine is in order. They shall not thereafter permit the machine to be operated or moved except by electors voting. They shall also see that arrangements are made for voting write-in ballots on the machine, if the machine is so arranged.

History: En. Sec. 145, Ch. 368, L. 1969.

23-3805. Write-in ballots. (1) If a voting machine allows registry or recording of votes for candidates whose names are not on the official ballot, these ballots are write-in ballots.

(2) A person whose name appears on a ballot shall not receive votes for the same office on a device for casting a write-in ballot.

History: En. Sec. 146, Ch. 368, L. 1969.

23-3806. Placement of machines—time voter to remain in booth—election board make-up. (1) The exterior of the voting machines and every part of the polling place shall be in plain view of the election judges.

(a) The machines shall be placed so that other persons on the premises cannot see how the voter casts his vote.

(b) The election judges shall not permit any person to remain in any position that would permit him or them to see how the voter votes or has voted.

(c) A voter shall not remain within the voting machine booth or compartment longer than is reasonably necessary to vote. If he refuses to leave, the election judges shall remove him.

(2) The election board of a precinct in which a voting machine is used consists of three (3) election judges and any special board of election judges appointed to count absentee ballots. If more than one (1) machine is used, one (1) additional election judge shall be appointed for each additional machine.

History: En. Sec. 147, Ch. 368, L. 1969.

23-3807. Registrar to instruct election judges. (1) Before each election, the registrar shall instruct all election judges in the use of the machine and their duties. He shall give to each election judge that has re-

ceived instruction, and is fully qualified to conduct the election with the machine, a certificate to that effect.

(2) The registrar shall call meetings of the election judges as necessary for instruction. Election judges shall attend meetings as necessary to receive the proper instructions.

(3) An election judge shall not serve if voting machines are used unless he has received instruction, is fully qualified to perform duties in connection with the machine, and has received a certificate to that effect from the custodian. However, this shall not prevent an emergency appointment of an election judge.

History: En. Sec. 148, Ch. 368, L. 1969.

23-3808. Publication of information concerning machines. Not more than ten (10) nor less than three (3) days before an election at which voting machines are used, the registrar or city clerk shall publish in a newspaper of general circulation in the county:

- (1) A diagram showing the voting machine with official ballot labels;
- (2) A statement of the locations where voting machines are on public exhibition;
- (3) Illustrated instructions on how to vote.

History: En. Sec. 149, Ch. 368, L. 1969.

23-3809. Voting machine to be exhibited. A voting machine shall be on exhibition in the office of the registrar or city clerk where voting machines are used. The registrar or city clerk shall demonstrate the voting machine to any inquiring voter.

History: En. Sec. 150, Ch. 368, L. 1969.

23-3810. Furnishing samples and supplies. (1) Not later than forty (40) days before an election, the secretary of state shall prepare samples of the printed matter and supplies named in this section and furnish one of each to the election officials where machines are used. The samples shall meet the requirements of the election and the construction of the machine used.

(2) The registrar or city clerk shall provide supplies for each machine including:

- (a) Written instructions for the election judges on testing and preparing the machines;
- (b) A certificate for the election judges to certify that they have tested and prepared the machine;
- (c) A certificate for the person preparing the machine to certify that the machine has been examined and is properly prepared for the election;
- (d) A certificate for party representatives to verify that they have witnessed the testing and preparation of the machines;
- (e) A certificate for the deliverer of the machine to certify that he has delivered the machines to the polling places in good order;

(f) A card stating the penalty for tampering with or injuring a voting machine;

(g) Two (2) seals for sealing the voting machine;

(h) One (1) envelope with a detachable delivery receipt in which the keys to the voting machine can be sealed and delivered to the election officials having printed on it the designation and location of the election district, the number of the machine, the number on the protective counter after the machine has been prepared for the election, and the number of the seal;

(i) One (1) envelope in which keys to the voting machine can be returned after the election;

(j) Two (2) statements of canvass for election officers to report the canvass of votes and other necessary information relating to the election;

(k) Three (3) complete sets of ballot labels in a form prescribed by the secretary of state and two (2) diagrams of the face of the machine with the ballot labels on the machine, each having proper voter instructions;

(l) Six (6) instructions to election judges and six (6) notices of the instruction meeting;

(m) Six (6) certificates that election judges have attended the instruction meeting, received instruction, and are qualified to conduct the machine election.

History: En. Sec. 151, Ch. 368, L. 1969.

23-3811. Registry lists—provision for number of each ballot. If voting machines are used, the registry lists shall contain a column to enter the number of each ballot as indicated by the number on the machine counter. Books or blanks for making poll lists shall not be provided.

History: En. Sec. 152, Ch. 368, L. 1969.

23-3812. Assistance to illiterate, blind or physically disabled voters. [(1)] A voter who declares he is unable to vote because he cannot read or write, is blind, or physically disabled shall be assisted as provided in section 23-3609.

(2) A person who deceives an elector voting under this section shall be punished as provided in section 94-1407, R. C. M. 1947.

History: En. Sec. 153, Ch. 368, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed subsection designation "(1)."

23-3813. Counting the votes. When the polls close, the election judges shall immediately lock the machine or remove the recording device and open the registering or recording compartments in the presence of any person desiring to attend. They shall ascertain the number of votes cast for each candidate, canvass, record, announce, and return the votes as provided by law.

History: En. Sec. 154, Ch. 368, L. 1969.

23-3814. Procedure after count is ascertained. (1) After the count is ascertained, the election judges shall place the machine in full view of

the public for one (1) hour so that any person may view the number of votes cast.

(2) Immediately after the hour has passed, the election judges shall seal and lock the machine. Unless used in a city primary election or ordered opened earlier by a court or the county recount board, the machine shall remain sealed and locked for twenty (20) days.

(3) If a machine has been used in a city primary election, it shall remain locked and sealed for at least five (5) days, unless opened by court order.

History: En. Sec. 155, Ch. 368, L. 1969.

23-3815. Disposition of write-in ballots and tally sheets. (1) The election judges shall return write-in ballots in a sealed package endorsed "write-in ballots." The election judges shall indicate the precinct and county and file the package with the registrar or city clerk. Each package shall be preserved for six (6) months after the election and may be opened only upon order of a court or the county recount board. At the end of six (6) months, the package shall be destroyed by the registrar or city clerk unless a court orders otherwise.

(2) Tally sheets taken from the machine, if any, shall be returned in the same manner.

History: En. Sec. 156, Ch. 368, L. 1969.

23-3816. Return sheets—contents. Officers who furnish tally sheets shall also furnish return blanks and certificates to the election officers. The return sheets shall:

(1) Have each candidate's name designated by the same reference character that the name bears on the ballot labels and counters and allow for writing in a vote for the candidate in figures, words, or both;

(2) Provide for the return of the vote on questions;

(3) Have a blank for indicating the precinct, ward, number and make of machine used, and other necessary information;

(4) Have a certificate to be executed before the polls open by the election judges stating that all counters except the protective counter, if any, and except as otherwise noted, stood at "000" at the beginning of the election, that all counters were examined before the election, that ballot labels were correctly placed on the machine and corresponded to the sample ballot, and other statements as the particular machine may require;

(5) Have a second certificate stating the manner of closing the polls and verifying the returns; that the returns are correct; giving the indication of the public counter, poll list, and protective counter, if any. The certificate shall specify the procedure of canvassing the vote and locking the machine and shall be signed by the election officials. The certificate and attest of the election officers shall appear on each return sheet.

History: En. Sec. 157, Ch. 368, L. 1969.

23-3817. Experimental use of machines. Officials authorized to adopt voting machines, may provide for the experimental use at an election of

a machine, approved by the secretary of state, in one (1) or more precincts without a formal adoption or purchase of the machine. The use at an election is valid for all purposes as if the machine had been formally adopted.

History: En. Sec. 158, Ch. 368, L. 1969.

23-3818. Machine breakdowns—electors may vote by paper ballot upon request. (1) If a machine becomes unworkable or unfit for use, voting shall proceed on another available machine or as in cases where machines are not used. The registrar shall furnish each voting place with a supply of ballots and other supplies to be used in case of emergency.

(2) Where voting machines are used, an elector may request to vote by paper ballot instead of using the voting machines. The election judges shall provide the elector with a paper ballot when requested. Paper ballots shall be cast and counted by the election judges in the manner provided by law.

History: En. Sec. 159, Ch. 368, L. 1969.

23-3819. Use of separate paper ballots for voting on certain money issues where machines do not allow proper lockout. In precincts where voting machines are used and the machines do not allow proper lockout, separate paper ballots shall be issued for money issues which do not involve the question of incurring of a state indebtedness, issuance of state bonds or debentures other than for refunding, or the levy of a tax for state purposes.

History: En. Sec. 160, Ch. 368, L. 1969.

23-3820. Penalty for tampering with or injuring machines. Any person who tampers, disarranges, defaces, injures, or impairs a voting machine in any way, or who mutilates, injures, or destroys any ballot or any appliance used in connection with a voting machine shall be imprisoned in the state prison for a period of not more than ten (10) years, be fined not more than one thousand dollars (\$1,000), or both.

History: En. Sec. 161, Ch. 368, L. 1969.

23-3821. Penalty for fraudulent returns or certificates. A person who purposely causes the vote on a machine to be incorrectly taken down as to the candidate or proposition voted on; who knowingly causes a false statement, certificate, or return of any kind to be signed or who knowingly consents to such things being done, shall be imprisoned in the state prison not more than (10) years, be fined not more than one thousand dollars (\$1,000), or both.

History: En. Sec. 162, Ch. 368, L. 1969.

23-3822. Applicability of election laws in general where not in conflict with this chapter. All laws applicable to elections where voting is not done by machine, and all penalties prescribed for violations of those laws, apply to elections and precincts where voting machines are used if they are not in conflict with the provisions of sections 23-3801 through 23-3821.

History: En. Sec. 163, Ch. 368, L. 1969.

CHAPTER 39

ELECTRONIC VOTING SYSTEMS

Section

- 23-3901. Purpose of act.
 23-3902. Definitions.
 23-3903. Use of electronic voting systems—paper ballots may be used upon request.
 23-3904. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices.
 23-3905. Procedure upon closing polls.
 23-3906. Rules and regulations—specifications for devices and equipment.
 23-3907. Applicability of election laws in general where not in conflict with this chapter.

23-3901. Purpose of act. The purpose of sections 23-3902 through 23-3907 is to authorize the use of electronic voting systems in which the voter records his votes by means of marking or punching a ballot or one or more ballot cards, which are so designed that votes may be counted by data processing machines at one or more counting places.

History: En. Sec. 164, Ch. 368, L. 1969.

23-3902. Definitions. As used in sections 23-3903 through 23-3907, unless otherwise specified:

(1) "Automatic tabulating equipment" includes apparatus necessary to automatically examine and count votes as designated on ballots and data processing machines which can be used for counting ballots and tabulating results.

(2) "Ballot card" means a ballot which is voted by the process of punching.

(3) "Ballot labels" means the cards, paper, booklet, pages or other materials containing the names of offices and candidates and statements of measures to be voted on.

(4) "Ballot" may include ballot cards, ballot labels and paper ballots.

(5) "Counting location" means a location selected by the registrar or city clerk for the automatic processing or counting, or both, of ballots which may be in the same county or in another county.

(6) "Electronic voting system" means a system of casting votes by use of marking devices and tabulating ballots employing automatic tabulating equipment or data processing equipment.

(7) "Marking device" means either an apparatus in which ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the voter or any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

History: En. Sec. 165, Ch. 368, L. 1969.

23-3903. Use of electronic voting systems—paper ballots may be used upon request. (1) Electronic voting systems may be used in elections, after approval as provided by law, provided that such systems enable the voter to cast a vote in secrecy for all offices and all measures on which he is entitled to vote, and that the automatic tabulating equipment may be

set to reject all votes for any office or measure when the number of votes therefor exceeds the number which the voter is entitled to cast, or when the voter is not by law entitled to cast a vote for the office or measure.

(2) Electronic voting systems may be used at primary elections provided the voter can secretly select the party for which he wishes to vote, and the automatic tabulating equipment will count only votes for the candidates of one party, and will reject all votes for an office when the number of votes therefor exceeds the number which the voter is entitled to cast, and will reject all votes of a voter cast for candidates of more than one party.

(3) So far as applicable, the procedure provided for voting paper ballots shall apply.

(4) The governing body of any county or city may, after approval as provided by law, adopt, experiment with, or abandon any electronic voting system herein authorized and approved for use in the state, and may use such system in all or a part of the precincts within its boundaries, or in combination with paper ballots. It may enlarge, consolidate or alter the boundaries of the precincts where an electronic voting system is to be used.

(5) In precincts where an electronic voting system is used, an elector may request a paper ballot to cast his vote and the election judges shall supply the elector with the paper ballot when so requested. These ballots will be cast and counted by the election judges in the manner provided by law.

History: En. Sec. 166, Ch. 368, L. 1969.

23-3904. Voting booths—sample ballots—arrangement of ballot information—write-in ballots—preparation and testing of devices. (1) In precincts where an electronic voting system is used, a sufficient number of voting booths shall be provided for the use of such systems and the booths shall be arranged in the same manner as provided for use with paper ballots.

(2) The officials charged with the duty of providing ballots, ballot cards or ballot labels for any polling place shall provide therefor sample ballots, ballot cards or ballot labels which shall be exact copies of the official ballots which are caused to be printed by them; said sample ballots shall be arranged in the form of a diagram showing the front of the marking device as it will appear after the ballots are arranged therein for voting on election day. Such sample ballots shall be posted by the election judges near the entrance of the voting booths and shall be there open to public inspection during the whole of election day.

(3) The ballot information, whether placed on the ballot or on the marking device, shall, as far as practicable, be in the order of arrangement provided for paper ballots except that such information may be in vertical or horizontal rows, or on a number of separate pages. Ballots for all questions must be provided in the same manner and must be arranged on or in the marking device in the places provided for such purpose. Any

voter who spoils his ballot or ballot card or makes an error may return it to the election board and secure another.

(4) A separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the elector places his ballot card after voting shall be provided where necessary to permit electors to write in the names of persons whose names are not on the ballot.

(5) The registrar or city clerk shall cause the marking devices to be put in order, set, adjusted and made ready for voting when delivered to the election precincts. Before the opening of the polls the election judges shall compare the ballots used in the marking device with the sample ballots furnished, and see that the names, numbers and letters thereon agree, and shall certify thereto on forms provided for this purpose. The certification shall be filed with the election returns.

(6) Within five (5) days prior to the election day, the registrar or city clerk shall have the automatic tabulating equipment tested to ascertain that the equipment will correctly count the votes cast for all offices and on all measures. Public notice of the time and place of the test shall be given at least forty-eight (48) hours prior thereto by publication once in one or more daily or weekly newspapers published in the county, city, or town using such equipment if a newspaper is published therein, otherwise in a newspaper of general circulation therein. The test shall be open to representatives of the political parties, candidates, the press and the public. The test shall be conducted by processing a pre-audited group of ballots so punched or marked as to record a predetermined number of valid votes for each candidate and on each measure, and shall include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. If any error is detected, the cause therefor shall be ascertained and corrected and an errorless count shall be made before the automatic tabulating equipment is approved. The test shall be repeated immediately before the start of the official count of the ballots, in the same manner as set forth above. After the completion of the count, the programs used and ballots shall be sealed, retained and disposed of as provided for paper ballots.

History: En. Sec. 167, Ch. 368, L. 1969.

23-3905. Procedure upon closing polls. (1) In precincts where an electronic voting system is used, as soon as the polls are closed, the election judges shall secure the marking devices against further voting. They shall thereafter open the ballot box and count the number of ballots or envelopes containing ballots that have been cast to determine that the number of ballots does not exceed the number of voters shown on the poll or registry lists. If there is an excess, this fact shall be reported in writing to the appropriate election officer in charge with the reasons therefor, if known. The total number of voters shall be entered on the tally sheets. The election judges shall thereupon count the write-in votes and prepare a return of such votes on forms provided for this purpose. If ballot cards are used, all ballots on which write-in votes have been recorded shall be serially numbered, starting with the number one, and the same number shall be placed on the ballot card of the voter. The inspectors or other appropriate

precinct election officials shall compare the write-in votes with the votes cast on the ballot card and if the total number of votes for any office exceeds the number allowed by law, a notation to that effect shall be entered on the back of the ballot card and its shall be returned to the counting location in an envelope marked "defective ballots" and such invalid votes shall not be counted. So far as applicable, provisions relating to defective paper ballots shall apply.

(2) The election judges shall place all ballots that have been cast in the container provided for that purpose, which shall be sealed and delivered forthwith by the election judges to the counting location or other designated place, together with the unused, void and defective ballots and returns.

(3) All proceedings at the counting location shall be under the direction of the registrar or city clerk under the observation of at least three election judges designated by the commissioners or city council and shall be open to the public, but no persons except those employed and authorized for the purpose shall touch any ballot, ballot container or return. If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a defective ballot which shall not include the invalid votes. All duplicate ballots shall be clearly labeled "duplicate," shall bear a serial number which shall be recorded on the damaged or defective ballot and shall be counted in lieu of the damaged or defective ballot.

(4) The return printed by the automatic tabulating equipment, to which has been added the return of write-in and absentee votes, shall constitute the official return of each precinct or election district. Upon completion of the count the returns shall be open to the public.

History: En. Sec. 168, Ch. 363, L. 1969.

23-3906. Rules and regulations—specifications for devices and equipment. (a) The secretary of state, state auditor and president of the Montana county clerk and recorders association shall constitute a board of election devices, which shall promulgate rules for the administration of this section, and shall approve the marking devices and automatic tabulating equipment used in electronic voting systems.

(b) No marking device or automatic tabulating equipment shall be approved unless it fulfills the following requirements:

(1) It shall permit and require voting in absolute secrecy.

(2) It shall permit each elector to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote, and no others; to vote for as many persons for an office as he is entitled to vote for; to vote for or against any question upon which he is entitled to vote; and to vote, where applicable, for all candidates of one (1) party or to vote a split ticket as he desires.

(3) It shall permit each elector, at presidential elections, by one (1) punch or mark to vote for the candidates of that party for presidential elector as a group.

(4) It shall comply with all other requirements of the election laws so far as they are applicable.

(5) No electronic voting system presently in use by any county, city or town in Montana shall be disapproved for use in such county, city or town by the board, except upon application by the governing body of said county, city or town.

History: En. Sec. 169, Ch. 368, L. 1969.

23-3907. Applicability of election laws in general where not in conflict with this chapter. All laws of this state applicable to elections where voting is done in another manner than by electronic voting systems and all penalties prescribed for violation of such laws, shall apply to elections and precincts where electronic voting systems are used, in so far as they are not in conflict with the provisions of sections 23-3901 through 23-3906.

History: En. Sec. 170, Ch. 368, L. 1969.

CHAPTER 40

CANVASS OF VOTES—RETURNS AND CERTIFICATES

Section

- 23-4001. Votes to be publicly canvassed upon closing of polls.
- 23-4002. Method of canvass.
- 23-4003. Counting ballots—pollbooks.
- 23-4004. Marking rejected ballots.
- 23-4005. Signing and certifying pollbooks.
- 23-4006. Items to be sent to registrar by election judges—manner of sending.
- 23-4007. Disposition of items by registrar.
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- 23-4017. Messenger may be sent for returns.
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- 23-4019. Defect in form of returns to be disregarded.

23-4001. Votes to be publicly canvassed upon closing polls. When the polls are closed, the election judges shall immediately canvass the votes. The canvass shall be public and continue without adjournment until completed and the result is publicly declared.

History: En. Sec. 171, Ch. 368, L. 1969.

23-4002. Method of canvass. (1) The canvass shall begin by a comparison of the pollbooks and the correction of any mistakes until they agree.

(2) The election judges shall take ballots unopened out of the box to determine whether each ballot is single.

(3) They shall count the ballots to ensure that the number of ballots corresponds with the number of names on the pollbooks.

(4) A ballot which is not endorsed by the official stamp is void and shall not be counted. A ballot or part of a ballot is void and shall not be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part.

(5) If two (2) or more ballots are folded together to look like a single ballot, they shall be laid aside until the count is complete. The election judges shall compare the count with the pollbooks and if a majority believe that the ballots folded together were voted by one (1) elector, they must be rejected; otherwise they must be counted.

(6) If the ballots exceed the number of names on the pollbooks they shall be placed in the box, and one (1) of the election judges shall publicly draw from the box and destroy unopened ballots equal to the excess. The election judges shall record in the pollbooks the number of ballots destroyed.

History: En. Sec. 172, Ch. 368, L. 1969.

Determining Elector's Intention

Where, from the manner in which a ballot was marked, it was impossible to determine the elector's choice, the ballot was void under prior section, and should not have been counted in an election contest. *Carwile v. Jones*, 38 M 590, 598, 101 P 153.

A ballot bearing a rather indistinct "X" before contestant's name but sufficient to be discernible should have been counted for him where there was no erasure and the elector voted for no other candidate for that office; and under the rule that the elector's intention must plainly appear, where the voter marked two squares for the office of sheriff, one of which showed an extra line through the "X" indicating perhaps, that the voter changed his mind but for the fact that squares before the names of other candidates were marked similarly, the intention was not clear and the ballot should not have been counted. *Peterson v. Billings*, 109 M 390, 392, 96 P 2d 922.

Under prior section, and the rule that election laws must be liberally construed,

a ballot showing the intersection of the "X" outside the square should have been counted for contestant, and one showing the intersection of the cross squarely on the line of the square was properly so counted for him. *Peterson v. Billings*, 109 M 390, 393, 96 P 2d 922.

Official Stamp on Ballot Stub

Where ballots had been delivered to electors by the judges of election with the official stamp apparently in the place in which the law requires it to be, although in reality it was on the stub instead of on the ballot proper, the act of the judges in removing the stamp with the stub, thus leaving the ballot without the official designation, did not render the ballots void, and the same should have been counted. *Harrington v. Crichton*, 53 M 388, 396, 164 P 537.

School Elections

The validity of contested school elections is determined by the laws of general elections, including canvassing statute. *Woolsey v. Carney*, 141 M 476, 378 P 2d 658.

23-4003. Counting ballots—pollbooks. (1) When the ballots and poll lists agree, the election judges shall count and determine the votes cast for each person.

(2) In counting, the ballots shall be opened singly by one (1) of the election judges and the contents read aloud to the other judges.

(3) As the ballots are read, each clerk must write on a tally sheet the name of every person voted for and the office, and keep tallies of the number of votes for each person.

(4) The tally sheets shall be compared and their correctness ascertained, and the clerks, under the supervision of the election judges, shall immediately write in the pollbooks:

- (a) The names of all persons who received votes;
- (b) The offices for which they received votes;
- (c) Total votes received by each person as shown by the tally sheets.
- (5) A ballot or vote rejected by the election judges shall not be included in the count.

History: En. Sec. 173, Ch. 368, L. 1969.

23-4004. Marking rejected ballots. A ballot rejected for illegality shall be marked by the election judges, by writing across the face "Rejected on the ground of, " filling the blank with a brief statement of the reasons for the rejection. The statement shall be dated and signed by a majority of the judges.

History: En. Sec. 174, Ch. 368, L. 1969.

23-4005. Signing and certifying pollbooks. Immediately after the votes are counted and the ballots sealed up, the pollbooks shall be signed and certified to by the election judges and clerks in a form prescribed by the secretary of state.

History: En. Sec. 175, Ch. 368, L. 1969.

23-4006. Items to be sent to registrar by election judges—manner of sending. (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely sealed and directed to the registrar:

- (a) The precinct registers,
- (b) The lists of persons challenged,
- (c) Both of the pollbooks,
- (d) Both of the tally sheets.
- (2) The election judges shall enclose in a separate package or envelope, securely sealed and directed to the registrar, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate package or envelope, securely sealed and directed to the registrar, all ballots voted including those not counted or allowed, and all detached stubs from ballots voted. This envelope shall be endorsed on the outside "ballots voted."

(4) Each election judge shall write his name across the seal of each of the envelopes or packages. The ballot box shall be returned to the registrar.

(5) The envelopes or packages required by this section shall be delivered to one (1) of the election judges chosen by lot, unless otherwise agreed upon, before they adjourn. The judge shall deliver them to the registrar in person or by registered mail no later than 10 a. m. on the day following the election.

History: En. Sec. 176, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

One Copy To Be Returned

The law contemplates that the election board in the precinct will return to the clerk and recorder but one tally sheet and

one copy of the pollbook. State ex rel. Lynch v. Batani, 103 M 353, 361, 62 P 2d 565.

23-4007. Disposition of items by registrar. (1) When the registrar receives the packages or envelopes, he shall file those containing the ballots voted and detached stubs and the unused ballots and keep them unopened for twelve (12) months. After twelve (12) months, if there is no contest begun in a court or no recount, he shall burn the envelopes without opening them or examining their contents.

(2) The registrar shall file the envelopes or packages containing the precinct registers, certificates of registration, pollbooks, tally sheets, and oaths of election officers. He shall keep them unopened until the commissioners meet to canvass the returns. The commissioners shall open the envelopes or packages.

(3) Immediately after the returns are canvassed, the registrar shall file the pollbooks, election records, and the papers delivered to the commissioners.

History: En. Sec. 177, Ch. 368, L. 1969.

23-4008. Disposition of items in event of contest. If there is a contest within twelve (12) months, the registrar shall keep the envelopes or packages unopened until the contest is finally determined and then destroy them. If the court has custody of the envelopes or packages as evidence, they are in the custody of the court and the registrar shall not destroy them.

History: En. Sec. 178, Ch. 368, L. 1969.

23-4009. Commissioners as board of county canvassers—meetings—registrar as clerk of board. (1) The commissioners are ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual place of meeting of the commissioners within three (3) days after each election, at 8 a. m. to canvass the returns.

(2) If one (1) or more of the commissioners cannot attend the meeting, his place shall be filled by one (1) or more county officers in this order: treasurer, assessor, sheriff, so that the board of county canvassers membership equals membership on the board of commissioners.

(3) The registrar is clerk of the board of county canvassers.

History: En. Sec. 179, Ch. 368, L. 1969.

Change in Membership of Board

The members of a county board of canvassers do not necessarily embrace the same officers, but are subject to changes which depend upon circumstances, and a writ of mandate, issued to compel such board to reconvene and canvass the returns from an election precinct which they had excluded, is properly directed to the

particular individuals comprising the board, describing them by name, and as constituting the board of county canvassers of election returns for a certain county of the state, the particular members of such board at the time in question being the persons against whom obedience must, if necessary, be enforced. State ex rel. Leech v. Board of Canvassers of Choteau County, 13 M 23, 29, 31 P 879.

23-4010. Canvassing returns, time of — messenger — certification that polls were not open. (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received or until there have been seven (7) postponements.

(3) If the returns from an election precinct have not been received by the registrar within seven (7) days after an election, he shall immediately send a messenger to the election judges. The messenger must obtain the returns from the judges and return them to the registrar.

(4) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the registrar. The registrar shall enter the certification in the minutes and in the statement required by section 23-4012.

History: En. Sec. 180, Ch. 368, L. 1969.

23-4011. Canvass to be public—nonessentials to be disregarded in counting returns. (1) The canvass shall be public. It shall proceed by opening the returns and determining the vote for each person and each proposition from each precinct and a declaration of the results.

(2) The returns shall not be rejected if they do not show who administered the oath to the election judges or clerks, failure to complete all the certificates in the pollbooks, or failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

History: En. Sec. 181, Ch. 368, L. 1969.

Rejection of Returns

A county board of canvassers has no authority to inquire into the validity of a certificate of nomination of a nominee for office, and therefore, where the election returns are genuine and properly certified, prohibition will not lie to restrain the board from canvassing such returns and counting the vote cast for such person upon the ground that the nomination was invalid. *Pigott v. Board of Canvassers of Cascade County*, 12 M 537, 538, 31 P 536.

The duties of a county canvassing board are ministerial, and such board has no authority to exclude the returns of an election precinct, regularly made, upon the ground that the voting was shown by affidavits to be illegal, and, having done so, may be compelled by mandamus to canvass such returns. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 30, 31 P 879. See also *State ex rel. Breen v. Toole*, 32 M 4, 10, 79 P 403; *Poe v. Sheridan County*, 52 M 279, 288, 157 P 185.

Where a county canvassing board issued a certificate of election to a candidate for the legislative assembly after unlawfully excluding the returns of a particular precinct, and then adjourned sine die, such board may be compelled by mandamus to reconvene and canvass the returns so excluded, and issue a certificate of election to the person shown by a complete canvass to be entitled thereto. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

Returns in the pollbook being left blank, and the certificate thereto not being properly filled in, are not grounds for rejecting returns, nor are they such irregularities as will entitle a board of canvassers to reject them. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

It is the duty of the board of canvassers to procure the check lists and surrendered lists before rejecting the vote of a precinct as returned by the pollbooks alone. *State ex rel. Leech v. Board of Canvassers of Choteau County*, 13 M 23, 31, 31 P 879.

23-4012. Statement of the result to be entered of record. As soon as the results are declared, the clerk of the board shall enter on the records:

- (1) Votes cast in the county;
- (2) Names of the persons voted for and the propositions voted upon;
- (3) Office for which each person was voted for;
- (4) Votes by precinct for each person and for and against each proposition;

(5) Votes by county for each person, and for and against each proposition.

History: En. Sec. 182, Ch. 368, L. 1969.

23-4013. Declaration of persons elected — certifying tie. (1) The board shall declare elected the persons having the highest number of votes given for each office to be filled in a single county or subdivision of a county.

(2) If a recount shows that two (2) or more persons received an equal and sufficient number of votes for the office of state senator or state representative, the county recount board shall certify this to the governor.

History: En. Sec. 183, Ch. 368, L. 1969.

Deceased Candidate Receives Majority

Where a candidate for re-election to a county office died 24 days before election, his death known generally to electors, but his name placed on ballot and majority voted for him supposing to retain his widow, appointed to fill the vacancy, until the next general election, a write-in candi-

date whom they intended to defeat, receiving the highest vote cast for any living person, held, on his application for writ of mandate to compel the county canvassing board to reconvene and cause certificate of election issued to him, that write-in candidate elected and entitled to the office. State ex rel. Wolff v. Geurkink, 111 M 417, 426, 109 P 2d 1094, 133 ALR 304.

23-4014. Certificates issued by the clerk. (1) The clerk shall immediately deliver to each person elected a certificate of election signed by him and authenticated with the seal of the board.

(2) The certificate shall state that the official bond must be filed within thirty (30) days after notice of election or appointment and that failure to file the bond vacates the office.

(3) This certificate shall not be issued to persons elected district judge.

History: En. Sec. 184, Ch. 368, L. 1969.

Cross-Reference

County clerk to issue certificate of election, sec. 16-1157.

23-4015. State returns, how made and transmitted. (1) After a general or special election, the clerk shall make an abstract of the vote for members of the legislative assembly, for officers elected in the state at large, and for judicial officers other than justices of the peace.

(2) The clerk shall seal the abstract, endorse it "Election Returns," and immediately send it to the secretary of state by registered mail.

History: En. Sec. 185, Ch. 368, L. 1969.

23-4016. State canvassers, composition and meeting of board. Within twenty (20) days after the election, or sooner if the returns are all received, the state auditor, state treasurer, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state, who is secretary of the board, shall make out and file in his office a statement of the canvass and transmit a copy to the governor.

History: En. Sec. 186, Ch. 368, L. 1969.

23-4017. Messenger may be sent for returns. If the returns from all counties have not been received five (5) days before the meeting of the board of state canvassers, the secretary of state shall immediately send a messenger to the registrar of each delinquent county. The registrar shall furnish the messenger with a certified copy of the statement required by section 23-4012.

History: En. Sec. 187, Ch. 368, L. 1969.

23-4018. Governor to issue commissions. Upon receipt of the statement required by section 23-4016, the governor shall issue commissions to the persons elected. If the governor has been elected to succeed himself, the secretary of state shall issue the commission.

History: En. Sec. 188, Ch. 386, L. 1969.

23-4019. Defect in form of returns to be disregarded. No declaration of an election result, commission, or certificate shall be withheld because of a defect or informality in the returns of any election if it can be determined with reasonable certainty the office intended and the person elected.

History: En. Sec. 189, Ch. 368, L. 1969.

CHAPTER 41

RECOUNTS

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23-4101. Recount of votes, order for—application, contents and time for making—hearing—determination by court. (1) Within five (5) days after the canvass of election returns, an unsuccessful candidate for any public office at a general, special, or city election may apply to the district court of the county where the election was held for an order directing the canvassing body to make a recount of the votes cast in any or all of the precincts.

(2) The application shall specify the grounds for a recount and be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within five (5) days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant were not correctly counted, he shall order the board of county canvassers to assemble within five (5) days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order.

History: En. Sec. 190, Ch. 368, L. 1969.

Cross-References

Application of Montana Rules of Civil Procedure to recount proceedings, see M. R. Civ. P., Rule 81(a), Table A.

Salaries withheld pending contests, secs. 59-508, 59-509.

Application Timely

Where the board was compelled by writ of mandate to reconvene by the supreme court and correct its findings with relation to two candidates for district judge, the application filed within five days after the corrected canvass was timely. *State ex rel. Riley v. District Court*, 103 M 576, 586, 64 P 2d 115.

Candidate for District Judge

Any unsuccessful candidate, including a candidate for the office of district judge, may apply to the district court for a recount. *State ex rel. Riley v. District Court*, 103 M 576, 580, 64 P 2d 115.

Candidates for Legislature

Recount statutes apply to candidates for the state senate and house of representatives. *State ex rel. Ainsworth v. District Court*, 107 M 370, 372, 86 P 2d 5.

Courts cannot try contests for seats in the legislature or decide issues involved in such contests, but mandamus lies to compel the court to perform the duty specially imposed upon it by recount statutes, the election certificate does not ensure acceptance of a candidate as a member of either house, but merely furnishes prima facie evidence that the majority of voters voted for him. *State ex rel. Ainsworth v. District Court*, 107 M 370, 376, 86 P 2d 5.

Function and Jurisdiction of Court

District court committed error in dismissing the application for a recount on the ground that applicant, convicted of a felony in federal court, lost his citizenship. *State ex rel. Stone v. District Court*, 103 M 515, 519, 63 P 2d 147.

The court could proceed in any suitable manner or mode most conformable "to the spirit" of the code in the absence of specific direction as to how proceedings shall be conducted, and was within its jurisdiction in directing canvassers' attention to sections of the codes covering points in dispute. *State ex rel. Riley v. District Court*, 103 M 576, 587, 64 P 2d 115. (But see *State ex rel. Peterson v. District Court*, 107 M 482, 488, 86 P 2d 403, below.)

A recount of ballots is not made in the presence of the district judge ordering it; in acting, the board is not required to ask the advice of the judge as to whether ballots are or are not properly marked, and he may not give such advice; the board is in duty bound to "hear all, consider all, and then decide." *State ex rel. Peterson v. District Court*, 107 M 482, 486, 86 P 2d 403.

The rule that district courts may not advise boards of county canvassers on questions arising on a recount of ballots as to the legality or illegality of ballots cast, etc., applies also to the supreme court on application for extraordinary relief by way of writs, and it cannot control the actions of such boards indirectly by directions or suggestions to district courts. (If *State ex rel. Riley v. District Court*, 103 M 576, 64 P 2d 115, be open to a contrary construction it is to that extent overruled.) *State ex rel. Peterson v. District Court*, 107 M 482, 488, 86 P 2d 403.

The law relating to proceedings for election recounts specifically divides the functions of the court and the canvassing board. The court determines the grounds of and necessity for a recount and orders it done. The board is entrusted with the duty of making the recount, just as the judges and clerks of election are entrusted with the duty of making the count and certifying thereto in the first place. *State ex rel. Peterson v. District Court*, 107 M 482, 485, 86 P 2d 403.

Grounds Sufficient

Where application for writ of supervisory control set forth that the votes were not correctly counted, such ground was sufficient to justify the court in finding that the votes "might not" have been correctly counted, and writ accordingly issued directing respondents to order the recount. *State ex rel. Thomas v. District Court*, 116 M 510, 511, 154 P 2d 980.

Purpose of Act

The sole purpose of the recount statutes is to determine, in a doubtful case, whether the official canvass of the vote was correct, and where the office of state senator or representative is concerned, the election certificate does not ensure one's acceptance as a member of either house, nor affect the ultimate right to the office, nor can the recount infringe upon the assembly's right to judge of the elections, returns and qualifications of its members in contravention of section 9, article V of the constitution. *State ex rel. Ains-*

worth v. District Court, 107 M 370, 372, 86 P 2d 5.

Recount Proceeding Not Election Contest

A proceeding to obtain a recount of votes is in no sense of the word an election contest, it is absolutely independent of the law relating to contesting of elections and either or both remedies are available. *State ex rel. Peterson v. District Court*, 107 M 482, 484, 86 P 2d 403.

Successive Recounts

Where an unsuccessful candidate for sheriff obtained a recount and was declared elected, and his opponent, the former successful but then unsuccessful candidate also asked for and was granted a recount, on application for a writ of supervisory control, the five-day limitation commenced to run from the time the board of canvassers announced the result of the first recount, and the application coming within that time, the court had jurisdiction to grant the second recount. *State ex rel. Peterson v. District Court*, 107 M 482, 485, 86 P 2d 403.

Wrongful Canvass

Recount statutes do not afford a legal remedy for an alleged wrongful canvass by a county canvassing board, and therefore does not defeat the right of a citizen to compel proper performance of their duty by writ of mandate. *State ex rel. Lynch v. Batani*, 103 M 353, 358, 62 P 2d 565.

DECISIONS UNDER FORMER LAW

Constitutionality

Former chapter on recounts was held constitutional as to sufficiency of title as

to due process of law. *State ex rel. Riley v. District Court*, 103 M 576, 584, 586, 64 P 2d 115.

23-4102. Recount limited to precincts and offices specified in order. The board of canvassers shall recount votes only in those precincts and for those offices specified in the court order.

History: En. Sec. 191, Ch. 368, L. 1969.

23-4103. Conditions under which recount to be made. A recount shall be made under any of the following conditions.

(1) If a candidate other than for the office of district judge is defeated by a margin not exceeding one-fourth of one per cent ($\frac{1}{4}$ of 1%) of the total votes cast or by a margin not exceeding ten (10) votes, whichever is greater, he may within five (5) days after the official canvass file with the registrar a verified petition stating he believes a recount will change the result and a recount of the votes for the office or nomination should be had.

(2) If a candidate is defeated for the office of district judge or an office voted on in more than one (1) county by a margin not exceeding

one-fourth of one per cent ($\frac{1}{4}$ of 1%) of the total votes cast for all candidates for the same position, he may within five (5) days after the official canvass file a petition with the secretary of state as set forth in subsection (1) of this section. The secretary of state shall immediately notify each registrar whose county includes any precincts which voted for the same office by registered mail and a recount shall be conducted in those precincts.

(3) If a question submitted to the vote of the people of the state is decided by a margin not exceeding one-fourth of one per cent ($\frac{1}{4}$ of 1%) of the total votes cast for and against the question, a petition as set forth in subsection (1) of this section may be filed with the secretary of state. This petition shall:

(a) Be signed by not less than one hundred (100) electors of the state representing at least five (5) counties of the state and be filed within five (5) days after the official canvass;

(b) The secretary of state shall immediately notify each registrar by registered mail of the filing of the petition and a recount shall be conducted in all precincts in each county.

(4) If there is a tie vote, the board making the canvass shall certify the vote to the registrar if the election took place only in one (1) county and to the secretary of state for other elections. The registrar or secretary of state shall proceed as if a petition for recount had been filed under this act. If a tie exists after the recount, the tie shall be resolved as provided by law.

History: En. Sec. 192, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Clerk of District Court

The provisions of the constitution, fixing the terms of judicial officers, are exclusive, and vacancies occur by operation of law upon the expiration of the terms designated, even where the people fail to elect their successors; hence, if, by reason of a tie vote, there is a failure to elect the successor of a clerk of a district court upon the expiration of the incumbent's term, there is a vacancy which the county commissioners are authorized to fill by appointment. State ex rel. Jones v. Foster, 39 M 583, 592, 104 P 860. See also State ex rel. Paterson v. Lentz, 50 M 322, 336, 146 P 932.

If there is a clause in the constitution providing that an officer shall hold for a definite term and until his successor is elected and qualified, and the people fail to elect his successor, there is no vacancy, and he is entitled to hold over until the people have chosen his successor in the usual way; but, in the case of judicial

officers, whose terms end at the expiration of a definitely fixed period, the words "and until his successor is elected and qualified," refer to those officers only who were first elected after the adoption of the constitution; they have no application to those chosen after such first election. State ex rel. Jones v. Foster, 39 M 583, 586, 104 P 860.

County School Superintendent

Former chapter governing proceedings on tie vote did not in terms declare that a vacancy in office shall occur when there has been no election to the office by reason of a tie vote. In so far as it related to officers named in the constitution (county school superintendent) and the authority of the county commissioners to fill vacancies therein, it was invalid. State ex rel. Chenoweth v. Acton, 31 M 37, 40, 77 P 299. See State ex rel. Jones v. Foster, 39 M 583, 591, 104 P 860.

23-4104. Failure to comply with provisions for counting votes, presumption of incorrectness from. If it appears from a verified application that the election judges or clerks failed to comply with the provision of

section 23-4003, that is sufficient cause for believing that the election judges and clerks did not correctly ascertain the number of votes cast for the applicant.

History: En. Sec. 193, Ch. 368, L. 1969.

23-4105. Ordering in another judge—court not divested of jurisdiction by failure to hear application within prescribed time. (1) If the judge of the district court of the county in which the election is held is for any reason disqualified from acting, the judge or a supreme court justice shall order another district judge to hear and determine the application.

(2) The district court shall not lose jurisdiction of the case by failure to hear and determine the application within the prescribed time, but shall retain jurisdiction until the cause is finally determined and the final count is made by the board of county canvassers.

History: En. Sec. 194, Ch. 368, L. 1969.

Jurisdiction Retained

The jurisdiction of the district court before which an application for a recount of the votes is filed does not cease when it orders the board to reconvene and re-

canvass the votes, but it retains jurisdiction of the proceeding until completion of the canvass, i. e., until the court is advised thereof. *State ex rel. Riley v. District Court*, 103 M 576, 587, 588, 64 P 2d 115.

23-4106. Limitation of recount to certain precincts. (1) If the application asks for a recount in more than one (1) precinct, but there are not sufficient grounds for a recount in all precincts, the court shall order a recount only in the precincts for which sufficient grounds are stated and shown.

History: En. Sec. 195, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-4107. Deposit of expense of recount—disposition—compensation of canvassing officials. (1) The court in its order shall determine the probable expense of making the recount and the applicant or applicants asking for the recount shall deposit with the board the amount determined in cash.

(2) If the recount shows that the applicant or applicants have been elected to the office, the deposit of each applicant shall be returned to him.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess, but if the expense is less than the cost the difference shall be refunded to the applicant.

(4) Members of the canvassing board and their clerks shall be compensated for their time spent in canvassing.

History: En. Sec. 196, Ch. 368, L. 1969.

23-4108. Procedure when more than one application for recount made. If more than one (1) candidate makes application for a recount, the court may consider the applications together. The court may make separate or

joint orders on the applications and apportion the expenses between the applicants.

History: En. Sec. 197, Ch. 368, L. 1969.

23-4109. Manner of recounting ballots. The board of canvassers in recounting the ballots shall count the votes cast, at the same time, in the precincts in which a recount is ordered for the several candidates in whose behalf a recount is ordered in the following manner:

(1) The registrar shall produce, unopened, unless it is necessary for the registrar to open the package or envelope to secure election materials which have been sealed in the wrong envelope or package, the sealed package or envelope received from the election judges of the precinct, or precincts, in which a recount is ordered containing all ballots voted in the precinct or precincts;

(2) A member of the board of county canvassers shall open the sealed package or envelope in the presence of the other members, the registrar, and the applicant or applicants seeking the recount;

(3) A member of the board shall then remove the ballots from the package or envelope in the presence of the applicant or applicants seeking the recount and the candidate or candidates who receive the highest number of votes by the first canvass;

(4) One (1) of the members of the board, in the presence and view of the candidates and one (1) other board member, shall read each ballot aloud. As the ballots are read, two (2) clerks shall write the votes cast for each person in each precinct at full length, on previously prepared tally sheets showing the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct;

(5) At the completion of the recount, the tally sheets shall be compared, their correctness ascertained, and the total number of votes cast for each candidate determined;

(6) If the recount shows the votes for any applicant are more or less than the number shown upon the official returns, the clerk of the board of canvassers shall correct the original returns to state the number of votes ascertained by the recount;

(7) The board of canvassers shall direct the clerk to enter the result of the election as determined by the recount on the board records and the clerk shall make out and deliver a certificate of election which conforms to the result of the recount.

History: En. Sec. 198, Ch. 368, L. 1969.

23-4110. Service of copy of application on candidate originally found to be elected—hearing. The candidate found to be elected as a result of the original or first canvass shall be served with a copy of the application for recount. He shall be given an opportunity to be heard and shall be permitted to be present and to be represented at any recount ordered.

History: En. Sec. 199, Ch. 368, L. 1969.

23-4111. Sealing recounted ballots. When the recount in a precinct has been finished, the ballots shall again be sealed in the same package

or envelope in the presence of the registrar and the members of the board of canvassers and shall be delivered to the registrar for custody.

History: En. Sec. 200, Ch. 368, L. 1969.

23-4112. Certificates of election, effect of recount on. If the recount shows that the person who received the certificate of election according to section 23-4014 did not receive the highest number of votes, the registrar shall issue a new certificate to the person receiving the highest number pursuant to the recount and the first certificate is void. The person receiving the second certificate shall be elected to the office.

History: En. Sec. 201, Ch. 368, L. 1969.

23-4113. Determining total vote cast for all candidates for an office. When an elector may vote for two (2) or more candidates for the same office, the total vote cast for all candidates for the office is the total vote cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

History: En. Sec. 202, Ch. 368, L. 1969.

23-4114. County recount board, board of county commissioners as—absent and disqualified members—clerk. (1) The county recount board shall always consist of three (3) acting members.

(2) The county recount board is the board of county commissioners.

(3) If one (1) or more of the commissioners cannot attend when the board meets, his place shall be filled by a county officer in the following order of appointment: the treasurer, the assessor, the sheriff, the clerk of court.

(4) If a member of the recount board was a candidate for an office or nomination for which votes are to be recounted, he shall be disqualified.

(5) The registrar is clerk of the recount board, and the board may hire additional clerks as needed.

History: En. Sec. 203, Ch. 368, L. 1969.

23-4115. Meeting of board when recount requested. (1) Immediately upon receiving an application for a recount or notice from the secretary of state that an application has been filed with him, the registrar shall notify the members of the county recount board.

(2) The board shall convene at the usual meeting place of the commissioners without undue delay but not later than five (5) days after receiving notice from the registrar.

History: En. Sec. 204, Ch. 368, L. 1969.

23-4116. Persons entitled to appear at recount—opening and recount of ballots. (1) Each candidate involved in a recount may appear, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots.

(2) If the recount is upon a referred or submitted question, one (1) qualified elector favoring each side of the question may be present and represent his side.

(3) The registrar shall produce, unopened, the sealed package or envelope received from the election judges in each election precinct in the county.

(4) The recount shall proceed as provided in section 23-4109 and as expeditiously as possible until completed.

History: En. Sec. 205, Ch. 368, L. 1969.

23-4117. Certification of recount results—transmittal to secretary of state—corrected abstract of votes—new certificate of election or nomination.

(1) Immediately after the recount the county recount board shall certify the result.

(2) At least two (2) members of the board shall sign the certificate and it shall be attested to under seal by the registrar.

(3) The certificate shall set forth in substance the proceedings of the board and appearance of any candidates or representatives, and it shall adequately designate each precinct recounted, the vote of each precinct according to the official canvass previously made, nomination, position, or question involved, and the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for an office, nomination, position, or question voted upon in more than one (1) county or for judge of the district court, the certificate shall be made in duplicate. One (1) copy shall be transmitted immediately to the secretary of state by registered mail.

(5) If the recount relates to an office, nomination, position, or question voted upon in only one (1) county, or part of a single county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(a) If the corrected abstract shows no change in the result, no further action shall be taken.

(b) If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to be elected or nominated.

History: En. Sec. 206, Ch. 368, L. 1969.

23-4118. Reconvening state board of canvassers—recanvass by state board—corrected abstract of votes—new certificate of election or nomination.

(1) When the secretary of state receives certificates from all county recount boards, he shall file them, and fix a time and place as soon as possible for reconvening the state board of canvassers, and shall notify the members.

(2) The state board of canvassers shall recanvass the official returns on the office, nomination, position or question, as corrected by the certificates and make a new and corrected abstract of the votes cast.

(a) If the corrected abstract shows no change in the results, no further action shall be taken.

(b) If there is a change in the results, a new certificate of election or nomination shall be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated.

History: En. Sec. 207, Ch. 368, L. 1969.

23-4119. Tie vote after recount. If the recount shows a tie vote and it cannot be determined who has been nominated or elected, the office or position shall be filled as provided by sections 23-4120 and 23-4121.

History: En. Sec. 208, Ch. 368, L. 1969.

23-4120. Procedure upon tie vote for United States representative—supreme court justice—district court judge—legislator. (1) If there is a tie vote for United States representative, the secretary of state shall send a certified statement to the governor showing the votes cast and the governor shall order a special election.

(2) If there is a tie vote for justice of the supreme court, judge of a district court, or member of the legislative assembly the secretary of state shall send a certified statement to the governor showing the vote cast for each person, and the governor shall appoint an eligible person to hold office.

History: En. Sec. 209, Ch. 368, L. 1969.

23-4121. Procedure upon tie vote for state executive officers—county officers other than county commissioner—township officers—commissioners.

(1) If there is a tie vote for governor, lieutenant governor, secretary of state, attorney general, state auditor, state treasurer, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the legislative assembly, at its next regular session, shall elect a person to fill the office by joint ballot of the two (2) houses.

(2) If there is a tie vote for clerk of the district court, county attorney, any county officer except county commissioner, or for a township officer, the commissioners shall appoint an eligible person as in case of other vacancies in the office.

(3) If there is a tie vote for commissioner, the senior district judge shall appoint an eligible person to fill the office as in other cases of vacancy.

(4) If there is a tie vote for state officers, the secretary of state shall transmit a certified copy of the statement to the legislative assembly showing the votes cast for the two (2) or more persons having an equal and the highest number of votes.

History: En. Sec. 210, Ch. 368, L. 1969.

23-4122. Expenses of recount. The expense of the recount is a county charge. Expenses of the secretary of state and state board of canvassers are a state charge.

History: En. Sec. 211, Ch. 368, L. 1969.

CHAPTER 42

CONTESTS OF BOND ELECTIONS

Section

23-4201. Grounds for challenge.

23-4202. Designation of time and place of hearing—citation—hearing and determination of issues.

23-4201. Grounds for challenge. (1) Any elector qualified to vote in a bond election of a county, city, or of any political subdivision of either may contest a bond election, for any of the following causes:

(a) That the precinct board in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election;

(b) That any official charged with a duty under this act, failed to perform that duty;

(c) That in conducting the election, any official charged with a duty under this act, violated any of the provisions of this act relating to bond elections.

(2) Within five (5) days after the election, the contestant shall file a verified petition with the clerk of the court in the judicial district where the election was held.

History: En. Sec. 212, Ch. 368, L. 1969.

23-4202. Designation of time and place of hearing—citation—hearing and determination of issues. (1) Within five (5) days after the petition is filed, the district judge shall designate the time and place of hearing.

(2) The clerk shall immediately issue a citation for the defendant to appear at the time and place specified in the order, and shall serve the citation immediately upon the defendant either:

(a) Personally, or

(b) If the party cannot be found, by leaving a copy at the house where he last resided.

(3) The court shall meet at the time and place designated to determine the contested election and shall have all the powers necessary to the determination thereof.

(4) The court shall be governed by the rules of law and evidence governing the determination of questions of law and fact, so far as the same may be applicable.

(5) The court shall continue in special session to hear and determine all issues in the contested election. After hearing the proofs and allegations of the parties and within ten (10) days after submission thereof, the court shall file its findings of fact and conclusions of law, and immediately shall pronounce judgment in the premises, either confirming or annulling and setting aside the election. The judgment shall be entered immediately thereafter.

History: En. Sec. 213, Ch. 368, L. 1969.

CHAPTER 43

PRESIDENTIAL ELECTORS

Section

- 23-4301. Election of electors, when chosen and number.
- 23-4302. Nomination of electors—ballot—votes.
- 23-4303. Returns—lists of electors elected.
- 23-4304. Meeting and voting of electors.
- 23-4305. Lists of persons voted for.
- 23-4306. Compensation of electors.
- 23-4307. Vacancy, how filled.

23-4301. Election of electors, when chosen and number. On the Tuesday next after the first Monday of November in the year in which a president of the United States is to be elected there shall be elected as many electors for president and vice-president of the United States as are allocated to this state.

History: En. Sec. 214, Ch. 368, L. 1969.

23-4302. Nomination of electors — ballot — votes. (1) Each political party shall nominate presidential electors for this state and file with the secretary of state certificates of nomination for these candidates at the time and in the manner and number provided by law.

(2) The secretary of state shall certify to the registrars the names of the candidates for president and vice-president of the several political parties, which shall be printed on the ballot.

(3) The names of candidates for electors of president and vice-president shall not be printed upon the ballot.

(4) The votes cast for candidates for president and vice-president of each political party shall be counted for the candidates for presidential electors of the political party whose names have been filed with the secretary of state.

History: En. Sec. 215, Ch. 368, L. 1969.

Nomination for Public Office

The nomination for presidential elec-

tors is a nomination for public office. State ex rel. Wheeler v. Stewart, 71 M 358, 363, 230 P 366.

23-4303. Returns—lists of electors elected. (1) The votes for candidates for president and vice-president shall be given, received, returned and canvassed as the votes are given, returned, and canvassed for candidates for Congress.

(2) The secretary of state shall prepare three (3) lists of names of electors elected and affix the seal of the state to the lists.

(3) The lists shall be signed by the governor and secretary of state and by the latter delivered to the college of electors at the hour of their meeting.

History: En. Sec. 216, Ch. 368, L. 1969.

23-4304. Meeting and voting of electors. (1) The electors shall meet in Helena at 2 p. m. on the first Monday after the second Wednesday in December following their election.

(2) The electors shall vote by separate ballots for one (1) person for president and one (1) for vice-president of the United States.

History: En. Sec. 217, Ch. 368, L. 1969.

Extension of Time Unconstitutional

Since, under prior section and the federal act (U.S.C., Tit. 3, sec. 5, enacted pursuant to section 1, article II of the federal constitution), the presidential electors must meet on the first Monday after the second Wednesday in December follow-

ing their election, the legislature could not, by enacting ch. 101, Laws 1943 (since repealed), constitutionally extend the time for depositing military ballots for the general election for seven weeks beyond the Tuesday after the first Monday in November. *Maddox v. Board of State Canvassers*, 116 M 217, 224, 149 P 2d 112.

23-4305. Lists of persons voted for. (1) The electors shall make lists of the persons voted for as president and vice-president, indicate the number of votes for each, certify, seal, and transmit the lists as prescribed by laws of the United States.

History: En. Sec. 218, Ch. 368, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

23-4306. Compensation of electors. Electors shall receive the same pay and mileage allowed members of the legislative assembly. Payments shall be certified by the secretary of state and paid by the state auditor from the state general fund.

History: En. Sec. 219, Ch. 368, L. 1969.

23-4307. Vacancy, how filled. If a vacancy occurs, the electors present shall elect a citizen of the state to fill the vacancy.

History: En. Sec. 220, Ch. 368, L. 1969.

CHAPTER 44

MEMBERS OF CONGRESS—ELECTIONS AND VACANCIES

Section

- 23-4401. Election of United States senators and representatives—for full term and to fill vacancies.
- 23-4402. Writs of election to fill vacancy.
- 23-4403. Certificates issued by governor.
- 23-4404. Residence required for election or appointment to Congress.

23-4401. Election of United States senators and representatives—for full term and to fill vacancies. (1) United States senators and representatives shall be elected at the general election preceding commencement of the term to be filled.

(2) If a vacancy occurs for senator, or United States representative, an election to fill the vacancy shall be held at the next general election. If an election is invalid or not held at that time, the election shall be at the second succeeding general election.

(3) Nominations and elections shall be as provided by law for governor.

History: En. Sec. 221, Ch. 368, L. 1969.

23-4402. Writs of election to fill vacancy. If a vacancy occurs in the office of United States senator or representative, the governor shall issue a writ of election to fill the vacancy. The governor may make a temporary appointment to fill the vacancy until the election.

History: En. Sec. 222, Ch. 368, L. 1969.

23-4403. Certificates issued by governor. Upon receipt of the statement required by section 23-4016, the governor shall send a certificate of election to each person elected.

History: En. Sec. 223, Ch. 368, L. 1969.

23-4404. Residence required for election or appointment to Congress. A person who has not resided in this state at least one (1) year prior to his election or appointment is not eligible for the office of United States senator or representative.

History: En. Sec. 224, Ch. 368, L. 1969.

CHAPTER 45

NONPARTISAN NOMINATION AND ELECTION OF JUDGES

Section

- 23-4501. Judicial offices as separate and independent offices for election purposes.
- 23-4502. Nominations.
- 23-4503. Declarations for nomination—contents—fee.
- 23-4504. Register of candidates for nomination—arrangement and certification of candidates' names—separate from party designation.
- 23-4505. Primary ballots—preparation and distribution.
- 23-4506. Judicial primary ballots.
- 23-4507. Separate counting and canvassing of judicial ballots—application of general laws.
- 23-4508. Nominations—placing names on ballots.
- 23-4509. Tie vote, how decided.
- 23-4510. Vacancies among nominees after nomination and before general election, how filled.
- 23-4511. Unlawful for political party to endorse judicial candidate.

23-4501. Judicial offices as separate and independent offices for election purposes. (1) Each vacancy for associate justice of the supreme court is a separate and independent office for election purposes. The chief justice of the supreme court shall assign an individual number to the four (4) associate justices and certify these numbers to the office of the secretary of state not less than one hundred eighty (180) days before a primary nominating election.

(2) Each judicial office in a district which has more than one (1) district judge is a separate and independent office for election purposes.

History: En. Sec. 225, Ch. 368, L. 1969.

Purpose and Construction of Act

Purpose of prior act was to eliminate, so far as possible, the selection of judges from partisan politics. The word "candi-

date" as used in act was not to receive a different construction from that as used in the general primary law. The act was to be construed in *pari materia* with the primary and general election laws. State ex rel. McHale v. Ayers, 111 M 1, 3, 105 P 2d 686.

23-4502. Nominations. Candidates for the supreme court or district court shall be nominated according to primary election laws so far as they are consistent with the provisions of this chapter.

History: En. Sec. 226, Ch. 368, L. 1969.

23-4503. Declarations for nomination — contents — fee. (1) Judicial candidates shall file declarations for nomination as required by the primary election laws in a form specified by the secretary of state.

(2) Declarations for nomination as associate justice of the supreme court shall designate the number of the office. A person can make only one (1) designation.

(3) Candidates for nomination as district judge in a district having more than one (1) judge shall specify the number of the office. His candidacy is limited to the number specified.

(4) Declarations shall not indicate political affiliation. The candidate shall not state in his declaration any principles or measures he advocates nor any slogans.

(5) Each person filing a declaration shall remit the fee prescribed by law for the position he seeks. Declarations for justice of the supreme court and district court judge shall be filed with the secretary of state.

History: En. Sec. 227, Ch. 368, L. 1969.

23-4504. Register of candidates for nomination—arrangement and certification of candidates' names—separate from party designation. (1) On receipt of a declaration, the secretary of state shall make entries in the "Register of Candidates for Nomination" on a page different from entries made for district candidates of political parties.

(2) The secretary of state shall separately arrange, certify, and file the names of judicial candidates, and certify to each registrar the names to be placed on the primary ballot at the same time, and in the same way, that other candidates are certified.

(3) The certificates shall show the names of candidates and number of the judicial office for each. The list shall be separate from lists of candidates appearing under political headings.

History: En. Sec. 228, Ch. 368, L. 1969.

23-4505. Primary ballots — preparation and distribution. (1) The registrars shall arrange, prepare, and distribute primary ballots for judicial offices designated "Judicial Primary Ballots." They shall be arranged as other primary ballots and be without political designation.

(2) The number of judicial primary ballots and sample ballots furnished shall be the same as other primary ballots.

History: En. Sec. 229, Ch. 368, L. 1969.

DECISIONS UNDER FORMER LAW

Write-in Candidate

The prior Nonpartisan Judiciary Act did not restrict electors to the privilege of voting only for candidates whose names appeared on the primary judicial ballot,

but, though the act was silent as to their right to write in the name of a qualified person to judicial office, they could do so. State ex rel. McHale v. Ayers, 111 M 1, 3, 105 P 2d 686.

23-4506. Judicial primary ballots. (1) The "Judicial Primary Ballot" shall be furnished to electors in the same manner as other primary ballots.

(2) The number of the judicial primary ballot shall correspond to the number of the elector's regular ballot.

(3) Different terms of office for the same position shall be considered separate offices.

History: En. Sec. 230, Ch. 368, L. 1969.

23-4507. Separate counting and canvassing of judicial ballots—application of general laws. (1) After closing the polls, the election officers shall separately count and canvass judicial ballots, and record and certify them, showing the number of votes cast for each person.

(2) Judicial ballots, stubs, and unused ballots shall be disposed of in the same manner as other ballots, stubs and unused ballots. Returns shall be made as provided by law.

History: En. Sec. 231, Ch. 368, L. 1699.

23-4508. Nominations—placing names on ballots. (1) Candidates for nomination equal to twice the number to be elected at the general election who shall receive the highest number of votes cast at the primary, or if the number of candidates is not more than twice the number to be elected then all candidates, are nominees for the office.

(2) Candidates who received the highest vote in the primary shall have their names printed on the official ballot for the general election.

(3) No candidate shall have his name on the judicial ballot for the general election unless he was a successful candidate at the primary election.

History: En. Sec. 232, Ch. 368, L. 1969.

23-4509. Tie vote, how decided. (1) In case of a tie vote, the candidates shall appear and cast lots before the secretary of state on the fifth day after the vote is officially canvassed.

(2) If a candidate fails to appear in person or by proxy in writing before 12 noon of the day appointed, the secretary of state shall by lot determine the candidate whose name will be printed on the official ballot.

History: En. Sec. 233, Ch. 368, L. 1969.

23-4510. Vacancies among nominees after nomination and before general election, how filled. (1) If after the primary a candidate is not able to run for the office for any reason, the vacancy shall be filled by the candidate next in rank in number of votes received in the primary election.

(2) If after the primary and before the general election there is no person able or entitled to the office or there are not enough candidates to fill the offices, the governor shall certify to the secretary of state the names of persons qualified for the office equal to twice the number to be elected. The names of those persons nominated by the governor shall be printed on the official ballot.

(3) Nominations made by the governor are not filed too late if filed within ten (10) days after the vacancy occurs. If the ballots have already been printed, stickers may be used to place the names on the ballot.

History: En. Sec. 234, Ch. 368, L. 1969.

23-4511. Unlawful for political party to endorse judicial candidate. A political party which endorses a candidate for justice of the supreme court or district court judge, a person who participates in an endorsement by a political party, or a person who acts on behalf of a political party in endorsing a judicial candidate is guilty of a misdemeanor.

History: En. Sec. 235, Ch. 368, L. 1969.

CHAPTER 46

CONVENTIONS TO RATIFY AMENDMENTS TO CONSTITUTION OF THE UNITED STATES

Section

- 23-4601. Convention for ratification of amendments to United States constitution.
- 23-4602. Delegates to constitutional convention.
- 23-4603. Nomination of delegates.
- 23-4604. Determination of election results.
- 23-4605. Ballot form.
- 23-4606. Time for convention of delegates.
- 23-4607. Quorum—officers—procedure—qualifications.
- 23-4608. Compensation of delegates and officers.
- 23-4609. Certificate of result—transmission to secretary of state of United States.
- 23-4610. Qualifications of petitioners and electors.
- 23-4611. Federal acts to supersede state provisions concerning amendments.

23-4601. Convention for ratification of amendments to United States constitution. If Congress proposes an amendment to the constitution of the United States to be ratified by state convention, a convention shall be held.

History: En. Sec. 236, Ch. 368, L. 1969.

23-4602. Delegates to constitutional convention. (1) The number of convention delegates shall be equal to the number of members in the legislative assembly. Each district shall have delegates equal to the number of members it is entitled to in the legislative assembly.

(2) Delegates shall be elected at the next primary or general election after Congress has proposed the amendment, or at a special election called by the governor.

(3) Except as otherwise provided in sections 23-4601 through 23-4611, the election shall be in accordance with the laws for the election of members of the legislative assembly.

History: En. Sec. 237, Ch. 368, L. 1969.

23-4603. Nomination of delegates. (1) Nominations for the office of delegate shall be by petition signed by not less than one hundred (100) voters of the district.

(2) Nominations shall be without political designation but shall be as “in favor of” or “opposed to” ratification of the proposed amendment.

(3) Petitions and acceptances shall be filed not less than thirty (30) days prior to the election.

History: En. Sec. 238, Ch. 368, L. 1969.

23-4604. Determination of election results. The results of the election are determined as follows:

(1) The votes cast for each candidate "in favor of" ratification, and the total votes cast for all candidates "in favor of" ratification and the votes cast for each candidate "opposed to" and the total votes cast for all candidates "opposed to" ratification shall be ascertained;

(2) Candidates receiving the highest number of votes equal to the number of delegates to be elected from the side receiving the greater number of votes are elected.

History: En. Sec. 239, Ch. 368, L. 1969.

23-4605. Ballot form. The official ballot form shall be prescribed by the secretary of state.

History: En. Sec. 240, Ch. 368, L. 1969.

23-4606. Time for convention of delegates. Delegates shall meet at the state capitol on the first Monday in the month following the election at 10 a. m. and constitute a convention to act upon the proposed amendment.

History: En. Sec. 241, Ch. 368, L. 1969.

23-4607. Quorum—officers—procedure—qualifications. A majority of the total number of delegates constitutes a quorum. The convention may choose a president, secretary, and other necessary officers; make rules governing the procedure of the convention; and shall judge the qualifications and election of its members.

History: En. Sec. 242, Ch. 368, L. 1969.

23-4608. Compensation of delegates and officers. Each delegate shall receive mileage and per diem as provided by law for members of the legislative assembly. The secretary and other officers shall receive compensation fixed by the convention.

History: En. Sec. 243, Ch. 368, L. 1969.

23-4609. Certificate of result—transmission to secretary of state of United States. When the convention has agreed by majority vote of delegates attending the convention, a certificate of the result shall be executed by the president and secretary and transmitted to the secretary of state of the United States.

History: En. Sec. 244, Ch. 368, L. 1969.

23-4610. Qualifications of petitioners and electors. Persons entitled to petition for nomination and vote at the election are determined by laws on registration.

History: En. Sec. 245, Ch. 368, L. 1969.

23-4611. Federal acts to supersede state provisions concerning amendments. If Congress prescribes how the convention shall be constituted and held by resolution or statute, sections 23-4601 through 23-4610 are inoperative and the convention shall be constituted and held as Congress directs. All state officers are directed to take action to constitute the convention as authorized by Congress and act as if acting under state statute.

History: En. Sec. 246, Ch. 368, L. 1969.

Repealing Clause

Section 248 of Ch. 368, Laws 1969 read "Sections 23-101 through 23-106, 23-201 through 23-202, 23-301 through 23-311, 23-401 through 23-407, 23-501, 23-501.1, 23-502 through 23-534, 23-601 through 23-604, 23-604.1, 23-604.2, 23-605 through 23-612, 23-701 through 23-713, 23-801 through 23-820, 23-901 through 23-929, 23-931, 23-933 through 23-936, 23-1001, 23-1008 through 23-1009, 23-1101 through 23-1107, 23-1109 through 23-1117, 23-1201 through

23-1228, 23-1301, 23-1302(1), 23-1302(2), 23-1303, 23-1303.1, 23-1304 through 23-1321, 23-1401 through 23-1406, 23-1501 through 23-1503, 23-1601 through 23-1608, 23-1608A, 23-1609 through 23-1618, 23-1701 through 23-1715, 23-1801 through 23-1808, 23-1812 through 23-1819, 23-1901 through 23-1904, 23-2001 through 23-2012, 23-2014, 23-2101 through 23-2111, 23-2201 through 23-2206, 23-2301 through 23-2323, 23-2401 through 23-2411, and 23-2501 through 23-2507, R. C. M. 1947 are repealed."

TITLE 25—FEES AND SALARIES

Chapter

2. Fees of county officers, 25-210, 25-227.
3. Fees and salaries of justices of the peace and constables, 25-306.
4. Jurors' and witnesses' fees, 25-403.
5. Salaries of state officers, deputies and employees, 25-501, 25-507.1 to 25-507.10.
6. Salaries of county officers, deputies and employees, 25-605.

CHAPTER 2—FEES OF COUNTY OFFICERS

Section

- 25-210. Fees for naturalization.
25-227. Fees for board of prisoners.

25-210. (4894) Fees for naturalization. The clerk of the district court shall collect from every person to whom a final certificate of naturalization is issued, at the time the same is issued, all fees authorized by law. All fees must be accounted for and paid to the county treasurer as provided by section 25-203, and shall be credited to the general fund of the county.

History: En. Sec. 1, p. 50, L. 1899; re-en. Sec. 3146, Rev. C. 1907; re-en. Sec. 4894, R. C. M. 1921; amd. Sec. 1, Ch. 73, L. 1967; amd. Sec. 1, Ch. 171, L. 1969.

other fee shall be charged for naturalization papers, or for the record thereof."

Effective Date

Section 2 of Ch. 171, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

Amendments

The 1969 amendment substituted "all fees authorized by law" for "a fee of two dollars and fifty cents (\$2.50); and no

25-227. (4886) Fees for board of prisoners. The fees allowed sheriffs of the several counties of the state for the board of prisoners confined in jail under their charge shall be at the rate of two dollars and twenty-five cents (\$2.25) per day for each of said prisoners, when the number of prisoners shall be twenty (20) or less each day. When the number of prisoners per day shall exceed twenty (20) and be less than thirty (30) then at the rate of two dollars (\$2.00) per day for each of said prisoners in excess of twenty (20) per day. When the number of prisoners per day shall exceed twenty-nine (29) and be less than forty (40), then at the rate of one dollar and seventy-five cents (\$1.75) per day for each and all of said prisoners in excess of twenty-nine (29); and when the number of prisoners per day shall exceed thirty-nine (39), then at the rate of one dollar and fifty cents (\$1.50) per day for each of said prisoners in excess of thirty-nine (39); provided the term "per day" shall mean a twenty-four (24) hour period in which at least one substantial meal has been served to such prisoner.

History: En. Sec. 4605, Pol. C. 1895; re-en. Sec. 3138, Rev. C. 1907; amd. Sec. 1, Ch. 81, L. 1919; re-en. Sec. 4886, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1943; amd. Sec. 1, Ch. 103, L. 1949; amd. Sec. 1, Ch. 131, L. 1951; amd. Sec. 1, Ch. 241, L. 1969.

Amendments

The 1969 amendment increased fees by fifty cents in each category.

CHAPTER 3—FEES AND SALARIES OF JUSTICES OF THE PEACE
AND CONSTABLES

Section

25-306. Salaries of justices of the peace in certain townships—hours—quarters.

25-306. (4929) Salaries of justices of the peace in certain townships—hours—quarters. Justices of the peace in townships having a population of ten thousand (10,000) people, and not exceeding fifteen thousand (15,000) people, shall each receive a salary of four thousand two hundred dollars (\$4,200) per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than fifteen thousand (15,000) people, and not exceeding eighteen thousand (18,000) people, shall each receive a salary of four thousand five hundred dollars (\$4,500) per annum, payable monthly from the county treasury; justices of the peace in townships having a population of more than eighteen thousand (18,000) people, shall each receive a salary of five thousand five hundred dollars (\$5,500) per annum, payable monthly from the county treasury; justices of the peace in such townships shall receive no other additional fees or compensation whatever, except that they may receive and keep those fees designated as “miscellaneous fees” by section 25-304; justices of the peace in townships having a population of less than ten thousand (10,000) people shall receive the fees emoluments provided under existing laws; justices of the peace in townships having a population of ten thousand (10,000) people and upwards shall keep their offices open for business from 9 o’clock a. m. to 12 o’clock noon, and from 1 o’clock p. m. to 5 o’clock p. m. on all judicial days, and at such other hours on judicial days as they may desire; providing, however, the office may be closed from 1 o’clock p. m. to 5 o’clock p. m. on Saturdays and such justices shall occupy such quarters as may be furnished and selected for them by the board of county commissioners, and said board may, in its discretion, select suitable quarters for such justices and may, in its discretion, pay for same from money in the county treasury.

History: En. Sec. 1, Ch. 84, L. 1917; re-en. Sec. 4929, R. C. M. 1921; amd. Sec. 1, Ch. 175, L. 1949; amd. Sec. 1, Ch. 51, L. 1953; amd. Sec. 1, Ch. 47, L. 1957; amd. Sec. 3, Ch. 184, L. 1963; amd. Sec. 1, Ch. 198, L. 1969.

Amendments

The 1969 amendment increased the

annual salaries of justices as follows: in townships of 10,000 to 15,000 people from \$3,400 to \$4,200; in townships of 15,000 to 18,000 people from \$3,600 to \$4,500; in townships of more than 18,000 people from \$4,600 to \$5,500; and in the provision relating to office hours, substituted “noon for “m.” after “12 o’clock.”

CHAPTER 4—JURORS’ AND WITNESSES’ FEES

Section

25-403. Compensation of jurors in courts not of record and at coroner’s inquests.

25-403. (4935) Compensation of jurors in courts not of record and at coroner’s inquests. Jurors in courts not of record, in both civil and criminal actions, shall receive five dollars (\$5) per day, but in civil actions the jury must be paid by the party demanding the jury, and must be taxed as costs against the losing party. Jurors in coroner’s inquest shall receive for their services the sum of five dollars (\$5) per day.

History: En. Sec. 4647, Pol. C. 1895; re-en. Sec. 3181, Rev. C. 1907; re-en. Sec. 4935, R. C. M. 1921; amd. Sec. 1, Ch. 206, L. 1947; amd. Sec. 1, Ch. 154, L. 1969.

Amendments

The 1969 amendment increased jurors' compensation from \$3. to \$5. a day.

CHAPTER 5—SALARIES OF STATE OFFICERS, DEPUTIES AND EMPLOYEES

Section

- 25-501. Salaries of certain elected state officials.
- 25-507.1. Central payroll system for state agencies authorized—state auditor to provide for inclusion of agencies—exceptions.
- 25-507.2. Payroll periods—pay dates—uniformity of dates—dates to be within ten days after close of payroll period.
- 25-507.3. Payroll period not to be changed because of central system except upon sixty days' notice.
- 25-507.4. Payroll roster mandatory—roster of established positions authorized—persons to be included on payroll roster.
- 25-507.5. Payroll roster certifications by appointing powers—reliance on certifications and attendance reports.
- 25-507.6. Duplicate warrants authorized—charge for loss—when considered lost.
- 25-507.7. Designation of person to receive warrants upon employee's death—reissuance of warrant in designated person's name.
- 25-507.8. Creation of state payroll revolving account in state treasury—state auditor to determine disbursements and transfers.
- 25-507.9. Determination of weekly or hourly pay rate.
- 25-507.10. Service charges—use of funds so collected.

25-501. Salaries of certain elected state officials. The annual salaries paid to certain elected officials of the state of Montana shall be as follows:

Governor	\$23,250
Chief justice of the supreme court	\$22,500
Justices of the supreme court, each	\$21,000
Attorney general	\$15,500
State auditor	\$10,500
Superintendent of public instruction	\$13,750
Railroad commissioner	\$11,550
State treasurer	\$10,500
Secretary of state	\$10,500
Clerk of the supreme court	\$11,500

History: En. Sec. 1, Ch. 202, L. 1959; amd. Sec. 2, Ch. 187, L. 1961; amd. Sec. 1, Ch. 212, L. 1963; amd. Sec. 1, Ch. 308, L. 1967; amd. Sec. 1, Ch. 323, L. 1969.

Amendments

The 1969 amendment substituted "cer-

tain" for "various" before "elected officials" and increased annual salaries as follows: chief justice from \$18,500 to \$22,500; justices from \$17,000 to \$21,000; railroad commissioners from \$10,500 to \$11,550; and clerk of the supreme court from \$9,000 to \$11,500.

25-507.1. Central payroll system for state agencies authorized—state auditor to provide for inclusion of agencies—exceptions. The state auditor shall install and operate a uniform state central payroll system for all state agencies. The auditor may provide for the orderly inclusion of state agencies into such system, and may make exceptions from the operation thereof for such periods as he determines necessary.

History: En. Sec. 1, Ch. 95, L. 1969.

Title of Act

An act providing for the establishment

and operation of a state central payroll system.

25-507.2. Payroll periods—pay dates—uniformity of dates—dates to be within ten days after close of payroll period. The state central payroll system may provide for the fixing of payroll periods and designated days of the month on which salaried employees shall be paid for the preceding payroll period. Such pay date shall be uniform for all employees of each state agency employed in the same geographic area and shall not be more than ten (10) calendar days following the close of the payroll period.

History: En. Sec. 2, Ch. 95, L. 1969.

25-507.3. Payroll period not to be changed because of central system except upon sixty days' notice. The payroll period of employees of a state agency shall not be changed by inclusion of the agency into the state central payroll system, or by any revision or modification of the system, unless notice of the proposed change has been given to each employee, who will be affected by such change in the form and manner prescribed by the state auditor not less than sixty (60) days prior to the effective date of the change.

History: En. Sec. 3, Ch. 95, L. 1969.

25-507.4. Payroll roster mandatory—roster of established positions authorized—persons to be included on payroll roster. The state auditor shall establish and maintain a payroll roster of all persons employed by every state agency and may establish and maintain a roster of all established positions. The payroll roster shall include both merit system and exempt employees, but shall not necessarily include emergency appointees, or the equivalent.

History: En. Sec. 4, Ch. 95, L. 1969.

25-507.5. Payroll roster certifications by appointing powers—reliance on certifications and attendance reports. Each appointing power shall correctly and promptly certify to the state auditor all changes, modifications, additions and deletions to the payroll roster in compliance with all applicable merit service, fiscal, and other pertinent laws, rules, and regulations. The state central payroll system shall disburse or otherwise act in reliance upon all payroll roster certifications and attendance reports certified to the state auditor by the respective appointing powers.

History: En. Sec. 5, Ch. 95, L. 1969.

25-507.6. Duplicate warrants authorized—charge for loss—when considered lost. Upon receipt of proof, satisfactory to the state auditor, that a payroll warrant issued by the state auditor has been lost or destroyed prior to its delivery to the employee to whom it is payable, the state auditor shall, upon certification by the payee's appointing power, issue a duplicate warrant in payment of the same amount, without requiring a bond from the payee and any loss incurred in connection therewith, shall be charged against the account from which the payment was derived. A payroll warrant shall be considered to have been lost if it has been sent to the payee, but not received by him within a reasonable time, consistent with the policy of prompt payment of employees, or if it has been sent to a

state officer or employee for delivery to the payee, or for forwarding to another state officer or employee for such delivery, and has not been received within such reasonable time.

History: En. Sec. 6, Ch. 95, L. 1969.

25-507.7. Designation of person to receive warrants upon employee's death—re-issuance of warrant in designated person's name. Any person now or hereafter employed by the state may file with his appointing power a designation of a person, who, notwithstanding any other provision of law, shall, on the death of the employee, be entitled to receive all warrants that would have been payable to the decedent had he survived. The employee may change the designation from time to time. A person so designated shall claim such warrants from the state auditor and on sufficient proof of identity, the state auditor shall re-issue the warrant in the name of the designated person and deliver said warrant to the designated person.

History: En. Sec. 7, Ch. 95, L. 1969.

25-507.8. Creation of state payroll revolving account in state treasury—state auditor to determine disbursements and transfers. An account in the revolving fund of the state treasury is hereby created, to be known as the state payroll revolving account, which account may be utilized for the payment of compensation to officers and employees of the state and all amounts withheld therefrom, pursuant to law. The amount to be disbursed from the state payroll revolving account at any time shall be determined by the state auditor, and on his order, shall be transferred forthwith from the fund, account, and appropriation otherwise properly chargeable therewith, to the state payroll revolving account.

History: En. Sec. 8, Ch. 95, L. 1969.

25-507.9. Determination of weekly or hourly pay rate. When the monthly or annual salary rate payable to an officer or employee of the state has been set by law or otherwise, notwithstanding any other provision of law, the weekly or hourly rate of pay shall be determined by dividing the annual salary by 52 weeks, or 2080 hours.

History: En. Sec. 9, Ch. 95, L. 1969.

25-507.10. Service charges—use of funds so collected. The state auditor may provide for a system of charges for services rendered by the state central payroll system to any department or agency of the state. Funds collected under this section shall be deposited to the credit of a revolving fund account and expended for the purpose of paying the expenses incurred by the state central payroll system.

History: En. Sec. 10, Ch. 95, L. 1969.

CHAPTER 6—SALARIES OF COUNTY OFFICERS, DEPUTIES AND EMPLOYEES

Section

25-605. Salaries of certain county officers.

25-605. Salaries of certain county officers. The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, coun-

ty assessors, county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries as provided in section 16-3302, shall be based on the population and taxable valuation of the county in accordance with the following schedule:

Population of County		Salary Col. A	Taxable Valuation of County		Salary Col. B
Below	3,000	\$2,780	Below	\$2,000,000	\$2,780
	3,000 to 3,999	\$2,860		\$2,000,000 to 2,999,999	\$2,860
	4,000 to 4,999	\$2,930		3,000,000 to 3,999,999	\$2,930
	5,000 to 5,999	\$2,990		4,000,000 to 4,999,999	\$2,990
	6,000 to 6,999	\$3,060		5,000,000 to 5,999,999	\$3,060
	7,000 to 7,999	\$3,260		6,000,000 to 6,999,999	\$3,260
	8,000 to 8,999	\$3,320		7,000,000 to 7,999,999	\$3,320
	9,000 to 9,999	\$3,400		8,000,000 to 9,999,999	\$3,400
	10,000 to 12,499	\$3,460		10,000,000 to 11,999,999	\$3,460
	12,500 to 14,999	\$3,530		12,000,000 to 13,999,999	\$3,530
	15,000 to 17,499	\$3,600		14,000,000 to 15,999,999	\$3,600
	17,500 to 19,999	\$3,660		16,000,000 to 17,999,999	\$3,660
	20,000 to 24,999	\$3,730		18,000,000 to 19,999,999	\$3,730
	25,000 to 29,999	\$3,790		20,000,000 to 22,499,999	\$3,790
	30,000 to 39,999	\$3,860		22,500,000 to 24,999,999	\$3,860
	40,000 to 49,999	\$3,960		25,000,000 to 29,999,999	\$3,960
	50,000 to 59,999	\$4,100		30,000,000 to 34,999,999	\$4,100
	60,000 to 69,999	\$4,240		35,000,000 to 39,999,999	\$4,240
	70,000 to 79,999	\$4,370		40,000,000 to 44,999,999	\$4,370
	80,000 to 89,999	\$4,500		45,000,000 to 49,999,999	\$4,500
	90,000 to 99,999	\$4,630		50,000,000 to 54,999,999	\$4,630
	100,000 and over	\$4,780		55,000,000 to 59,999,999	\$4,780
				60,000,000 to 64,999,999	\$4,780
				65,000,000 to 69,999,999	\$4,780
				70,000,000 to 74,999,999	\$4,780
				75,000,000 to 79,999,999	\$4,780

The total salary paid to county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, county assessors, county superintendents of schools and county sheriffs, and county surveyors in counties where county surveyors receive salaries, as provided in section 16-3302, shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation; provided, however, that county superintendents of schools shall receive, in addition to the salary based upon the totals of column A and B above, the sum of four hundred dollars (\$400) per year.

History: En. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953; amd. Sec. 1, Ch. 22, L. 1957; amd. Sec. 1, Ch. 66, L. 1959; amd. Sec. 1, Ch. 195, L. 1961; amd. Sec. 1, Ch. 216, L. 1965; amd. Sec. 1, Ch. 231, L. 1967; amd. Sec. 1, Ch. 284, L. 1969

Amendments

The 1969 amendment substituted references to section 16-3302 for references to repealed section 32-303; raised all the salary bases in the schedule; and in the final paragraph, inserted "and county sheriffs" before "and county surveyors."

TITLE 26—FISH AND GAME

Chapter

1. Fish and game commission, director and wardens—creation—powers and duties, 26-104, 26-105, 26-110.1, 26-110.2, 26-119, 26-124.
2. Fishing and hunting licenses, 26-202.1, 26-202.2, 26-202.6, 26-204, 26-223, 26-229 to 26-233.
3. Restrictions on taking fish and game—open and closed seasons, 26-301, 26-307, 26-307.2, 26-307.3, 26-332, 26-345.
12. Permits for breeding game birds and animals—other regulations, 26-1205 to 26-1212.
17. Importation of salmonid fish or eggs, 26-1701 to 26-1705.

CHAPTER 1—FISH AND GAME COMMISSION, DIRECTOR AND WARDENS— CREATION—POWERS AND DUTIES

Section

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| 26-104. | Powers and duties of commission. |
| 26-105. | Compensation of commissioners. |
| 26-110.1. | Protection of private property by fish and game wardens—ex officio fire wardens. |
| 26-110.2. | Power of wardens in protection of private property. |
| 26-119. | Fish and game commission to procure plans for construction projects. |
| 26-124. | Reports of state fish and game director. |

26-102. (3651) Districts for appointment of members of commission.

Cross-References

Bonds of state officers and employees,
sec. 6-105 et seq.

26-104. (3653) Powers and duties of commission. (1) to (14). * * *
[Same as parent volume.]

(15) It shall have authority to fix seasons, bag limits, possession limits and season limits; to open or close, shorten or lengthen seasons on any species of game, bird, fish or fur-bearing animal as defined by section 26-201, and to declare areas open to the hunting of deer, antelope and elk by bow and arrow permit holders, and during times when only bow and arrows may be used, to hunt deer, antelope and elk in such areas; it is authorized to declare areas open to deer hunting where shotguns only may be used to hunt or kill deer; and it is authorized to declare areas which may be open to special license holders only, and issue special licenses in a limited number when it shall determine, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish or animals, or fur-bearing animals, or to declare such a special season and issue special licenses whenever game birds or animals or fur-bearing animals are causing damage to private property, or when written complaint of such damage has been filed with the state fish and game commission by the owner of such property, and in determining to whom such licenses shall be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system; provided, however, that all drawings for elk permits shall be held in the city or town which has suitable accommodations for the persons who will attend the drawing nearest to the area

to be hunted but in no case shall the drawing be held in a city or town more distant than the county seat nearest to the area to be hunted.

(16) to (26) and concluding paragraph. * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; amd. Sec. 1, Ch. 157, L. 1941; Subsec. (24) added by Sec. 1, Ch. 40, L. 1951; Subsec. (15) amd. by Sec. 1, Ch. 157, L. 1955; Subsec. (25) added by Sec. 1, Ch. 151, L. 1957; amd. Sec. 1, Ch. 36, L. 1959; Subsec. (26) added by Sec. 1, Ch. 96, L. 1959; amd. Sec. 1, Ch. 173, L. 1965; Subsec. (15) amd. by Sec. 1, Ch. 344, L. 1969.

Amendments

The 1969 amendment added the proviso at the end of subsection (15).

Subd. 9

Fish Ladder Construction

Mandamus to compel fish pond licensee, in compliance with a statute, to construct fish ladder on diversion dam installed seven years before with approval of fish

and game commission would be denied on theory that individuals who have put water to beneficial use should not have their rights arbitrarily diluted under claim of sovereign right. *Paradise Rainbows v. Fish and Game Commission*, 148 M 412, 421 P 2d 717.

Subd. 15

Seasons on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing penalty for trespass to possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. *State ex rel. Nepstad v. Danielson*, 149 M 438, 427 P 2d 689.

26-105. (3654) Compensation of commissioners. The members of the commission shall receive no compensation for their services as members thereof, except a per diem of twenty dollars (\$20) for each member for every day in actual attendance at the meetings of said commission, or in the execution of their duties as members of said commission; provided, however, that in no instance shall any member of said commission other than the chairman receive as said per diem a sum in excess of one thousand five hundred dollars (\$1,500) in any one (1) year, provided that the chairman of the commission shall not receive a sum in excess of two thousand dollars (\$2,000) in any one (1) year, and the members of said commission shall be allowed their actual and necessary traveling expenses, while performing their duties as members of said commission which shall be paid from the fish and game fund of the state of Montana upon presentation of proper vouchers therefor.

History: En. Sec. 5, Ch. 193, L. 1921; re-en. Sec. 3654, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1949; amd. Sec. 1, Ch. 6, L. 1951; amd. Sec. 1, Ch. 127, L. 1953; amd. Sec. 1, Ch. 57, L. 1957; amd. Sec. 1, Ch. 238, L. 1965; amd. Sec. 1, Ch. 166, L. 1969.

Amendments

The 1969 amendment increased the per diem allowance from \$15 to \$20, raised the maximum per diem compensation of members other than the chairman from \$1,000 to \$1,500 per year and raised the maximum per diem compensation of the chairman from \$1,500 to \$2,000.

26-110. (3659) Qualifications, powers and duties, of game wardens.

Subd. 4

Confiscation of Illegally Killed Game

Illegally killed elk, tagged improperly in that one tag was not punched on month and day of kill and other was not filled in with name and address of hunter and county of kill, were subject to confiscation by fish and game commission.

State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

Subd. 6

Consent to Improper Tagging

Any consent given by game warden to illegal tagging of killed elk would be out-

side scope of authority and would have no effect whatever in law. State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

26-110.1. Protection of private property by fish and game wardens—ex officio fire wardens. It shall be the duty of state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-3308, 94-3309 and 32-4410, R. C. M. 1947, on private lands where public recreation is permitted, and to act as ex officio fire wardens as provided by section 81-1412, R. C. M. 1947.

History: En. Sec. 1, Ch. 85, L. 1969.

Title of Act

An act to require state fish and game wardens (state conservation officers) to enforce the provisions of sections 94-3308,

94-3309 and 32-4410, R. C. M. 1947, on private lands where public recreation is permitted, and act as ex officio fire wardens as provided by section 81-1412, R. C. M. 1947.

26-110.2. Power of wardens in protection of private property. State fish and game wardens (state conservation officers) shall have the power of peace officers in the enforcement of sections 94-3308, 94-3309 and 32-4410, R. C. M. 1947.

History: En. Sec. 2, Ch. 85, L. 1969.

26-111. (3660) Oath of state fish and game director and wardens.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

26-115. (3664) Superintendent of state fisheries—appointment.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

26-119. (3668) Fish and game commission to procure plans for construction projects. It shall be the duty of the state fish and game commission of the state of Montana to procure suitable plans and specifications for any construction project under its authority or under authority of the state legislature, when the estimated value or cost of the same shall be more than one thousand dollars (\$1,000) but less than five thousand dollars (\$5,000) and said commission shall cause said project to be constructed, but in accordance with such plans and specifications, by contract, said contract to be let after publishing a notice stating the time and place of letting the same, and where plans and specifications may be seen. Said notice shall be published not less than once a week for two (2) weeks prior to the time of letting such contract, in some newspaper of general circulation in the county in which said project is to be constructed, and elsewhere if deemed best by said commission, and said commission, if not satisfied with the bids received, or for any other reason, may reject any and all bids received and readvertise as often as may be necessary. Only one bid need be received and the contract shall be let to the lowest responsible bidder. Any person to whom a contract may be given shall be required to give a good and sufficient bond, conditioned for the faithful performance and completion of such contract, the same to be approved by

the commission, or some member of the committee. The commission may contract for construction projects estimated to cost one thousand dollars (\$1,000) or less without providing for plans or specifications, notice, competitive bidding or performance bonds.

History: En. Sec. 19, Ch. 193, L. 1921; re-en. Sec. 3668, R. C. M. 1921; amd. Sec. 1, Ch. 186, L. 1969.

first sentence, inserted the provision that only one bid need be received, and added the last sentence.

Amendments

The 1969 amendment substituted "construction projects" for "buildings" where the references appear, inserted "but less than five thousand dollars (\$5,000)" in the

Effective Date

Section 2 of Ch. 186, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 3, 1969.

26-124. (3673) Reports of state fish and game director. The state fish and game director shall, on or before the first day of June of each year, make a written report to the state fish and game commission of the operation of his department during the preceding year ending April 30th and the state fish and game commission shall thereafter report as provided in section 2 [82-4002] of this act.

History: En. Sec. 24, Ch. 193, L. 1921; re-en. Sec. 3673, R. C. M. 1921; amd. Sec. 6, Ch. 81, L. 1951; amd. Sec. 9, Ch. 93, L. 1969.

rector" for "warden" and substituted the reference to the reporting requirements of section 82-4002 for provisions detailing contents of report to be made to governor in every even-numbered year.

Amendments

The 1969 amendment substituted "di-

26-135. Wild animals damaging property, etc.

Discretion of Commission

Fish and game commission cannot be mandated to permit landowner to kill elk to protect his property since, although statute compels commission to investigate

property damage upon complaint, it confers discretion to act, one exercise of which is taking no action. State ex rel. Sackman v. State Fish and Game Commission, 151 M 45, 438 P 2d 663.

CHAPTER 2—FISHING AND HUNTING LICENSES

Section

- 26-202.1. Licenses—fees—classifications of licenses—fees and powers under licenses.
- 26-202.2. Special licenses—tagging of carcasses of game animals.
- 26-202.6. Nonresident one (1) day fishing license (Class B-4).
- 26-204. Application for license.
- 26-223. Appointments nontransferable—revocation—oaths.
- 26-229. Wildlife conservation license required for purchase of hunting, fishing, or trapping license.
- 26-230. Application—hunting, fishing or trapping license tags to be affixed or recorded on wildlife conservation license—fees—expiration.
- 26-231. Unlawful sales of hunting, fishing or trapping licenses.
- 26-232. Misdemeanor—penalty.
- 26-233. Disposition of fees.

26-202.1. Licenses—fees—classifications of licenses—fees and powers under licenses. (1) and (2). * * * [Same as parent volume.]

(3) Class A-2 License—Special Bow and Arrow License. Any holder of a Class A-1 license and any one of the following: a Class A-3, A-4, A-5, B-2, B-5 or B-6 license, may upon payment of an additional sum of three dollars (\$3) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which

shall authorize the holder thereof to pursue, hunt, shoot, and kill deer, antelope and elk with bow and arrow and to possess the carcass of deer, antelope and elk during a special season, as so licensed and in special areas, as may be designated by the fish and game commission.

(4) to (13). * * * [Same as parent volume.]

(14) Exception. (a) A resident under the definition of section 26-202.3, who is sixty-five (65) years or older shall be entitled to fish and hunt game birds with a pioneer license issued by the state fish and game commission for a fee of fifteen cents (\$.15). The form of such license shall be prescribed by the fish and game commission.

(b) Residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) A veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, may fish with a license issued by the head of the hospital on forms prescribed and furnished by the commission. The fee for such license shall be fifteen cents (\$.15).

(d) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

(e) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, A-4, and A-5 licenses for one-half ($\frac{1}{2}$) of the fees prescribed in this section.

(f) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6 licenses to be issued in each of the hunting districts designated by it.

(g) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(15) and (16). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 267, L. 1955; amd. Sec. 1, Ch. 16, L. 1957; amd. Sec. 1, Ch. 100, L. 1957; amd. Sec. 2, Ch. 36, L. 1959; amd. Sec. 1, Ch. 36, L. 1963; amd. Sec. 1, Ch. 55, L. 1963; amd. Sec. 1, Ch. 148, L. 1963; amd. Sec. 1, Ch. 9, L. 1965; amd. Sec. 1, Ch. 241, L. 1965; amd. Sec. 1, Ch. 319, L. 1967; amd. Sec. 1, Ch. 84, L. 1969.

Amendments

The 1969 amendment inserted "a Class A-1 license and any one of" before "the following" in subsection (3) and revised subsection (14) by substituting "and hunt game birds * * * game commission" for "without a Class A license and hunt game birds without a Class A-1 license. He shall carry proof of age in lieu of the license" in subdivision (a), by substituting the provisions of subdivision (b) for "A child

residing at the Montana children's center at Twin Bridges and the committed resident of the Montana training center at Boulder will be entitled to fish without a license. He shall carry a written statement by the superintendent of the center in lieu of the license," by inserting the provisions of subdivision (c), and by designating former subdivisions (c) to (f) as (d) to (g).

Subd. 4

Tagging Game Killed by Another

Tagging of game animal that someone

else has killed or so far brought under control that one can walk up to it and cut its throat is not method of acquiring ownership contemplated by statute authorizing licensed hunter to pursue, hunt, shoot and kill game animal and then to possess carcass with result that person tagging illegally killed elk is not entitled to possession. State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

26-202.2. Special licenses—tagging of carcasses of game animals. (1)

Special licenses authorized to be issued under the general powers of the fish and game commission may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the applicant prior to the time of filing of application for a special license.

(2) Any person who has obtained a moose, mountain sheep, bison, or buffalo license shall not be eligible to apply for another such license for the next succeeding seven (7) years, if such person has killed or taken an animal of the species for which such special license was issued. Any person who has obtained a moose, mountain sheep, bison or buffalo license but did not kill or take an animal of the species for which such special license was issued, shall be eligible to apply for another such license in any succeeding year if he returns his unused special license to the fish and game commission before or at the time application is made. It is further provided that any person who has received a special license for elk or mountain goat shall not be eligible to receive a second special license for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game species desired to be killed by the commission reapplication may be made by those valid license holders of the current year who may fall within these limitations. It is further provided that any person who has killed or taken a game animal, except a deer during the current license year, shall not be permitted to receive a special license under this act to hunt or kill a second game animal of the same species.

(3) Tagging of carcasses of game animals. Every license issued by the fish and game commission authorizing the holder thereof to pursue, shoot, kill, capture, take or possess game animals, whether issued to a resident or a nonresident, shall provide such tags, coupons, or markers, as the commission shall prescribe, and when any person should take or kill any game animal under such license, such person shall immediately thereafter cut out, from the tag, coupon or other marker, the date the animal was killed or taken and attach the tag, coupon or other marker to said animal, completely filled out with the name of the license holder, his address, and any other information requested on such tag, coupon or other marker, and such tag, coupon or other marker shall be kept attached to said carcass so long as any considerable portion of the carcass remains unconsumed, and when the proper tag, coupon or other marker is attached to said game animal so killed, the same may be possessed, used, stored

and transported. Any person who should kill any game animal by authority of any license issued for the killing of such game animal, and shall fail or neglect to cut out day and month of kill or provide such other information as is required and attach his tag, coupon or other marker so provided with the license issued, to the carcass of said game animal or portion thereof, or any person who shall fail to keep said tag, coupon or other marker attached to said game animal or portion thereof while the same is possessed by him shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided for by law in section 26-324.

History: En. Sec. 2, Ch. 267, L. 1955; amd. Sec. 1, Ch. 65, L. 1963; amd. Sec. 1, Ch. 72, L. 1969.

vided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

Amendments

The 1969 amendment deleted "or antelope" after "deer" in the last sentence of subsection (2) and rewrote the provisions of subsection (3) to substitute references to "game animal" for "deer, elk, moose or antelope" and to require the date and month of kill to be cut out of the game tag.

Effective Date

Section 2 of Ch. 72, Laws 1969 pro-

Subd. 3

Tagging Game Killed by Another

Under statute requiring tagging, word "take" does not mean that one can tag animal someone else has killed, so that if one person illegally killed elk another person cannot gain ownership by tagging it and ownership of elk remains in state. State ex rel. Visser v. State Fish and Game Commission, 150 M 525, 437 P 2d 373.

26-202.6. Nonresident one (1) day fishing license (Class B-4). Any person not a resident as defined in section 26-202.3, R. C. M. 1947, who is a holder of a valid wildlife conservation license, upon payment of the sum of one dollar (\$1) to any agent of the state fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a one (1) day nonresident fishing license, which shall authorize the holder to fish with hook and line as prescribed by rules and regulations of the commission for one (1) calendar day as indicated on the license.

History: En. Sec. 1, Ch. 117, L. 1969.

Title of Act

An act to provide for a one (1) day nonresident fishing license to be issued by the state fish and game commission.

Effective Date

Section 2 of Ch. 117, Laws 1969 read "This act shall be in full force and effect from and after May 1, 1969."

26-204. (3684) Application for license. Such license shall be procured from the state fish and game director, or any state fish and game warden, or any authorized agent of the state fish and game director. The applicant shall state his name, age, occupation, place of residence, post-office address, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts, data or descriptions as may be required by the commission. The statements made by the applicant shall be subscribed to before the officer or agent issuing said license.

It is unlawful to subscribe to any application containing a material false statement. Any material false statement contained in an application renders it, and any license issued pursuant to it, null and void. Any person violating any provision of this statute is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 238, L. 1921; 1, Ch. 84, L. 1947; amd. Sec. 1, Ch. 157, re-en. Sec. 3684, R. C. M. 1921; amd. Sec. L. 1969.

Amendments

The 1969 amendment substituted "director" for "warden" and deleted "deputy" before "state fish and game warden" in the first sentence and deleted "and sworn" after "subscribed" in the last sentence of the first paragraph and rewrote the second paragraph which read: "Any person who shall swear or affirm to any false statement in the application for a hunting or

fishing license, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished as provided in section 26-324."

Effective Date

Section 2 of Ch. 157, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

26-223. Appointments nontransferable — revocation — oaths. Appointments of license agents shall be nontransferable, and each appointment shall be valid only at the single location of the business as stated on the certificate of appointment. Such appointments may be summarily revoked at any time by the state fish and game director upon discontinuance of the business at the stated location or for noncompliance with the provisions of this act or other regulations. Duly appointed license agents are hereby authorized to administer oaths to applicants for hunting and fishing licenses.

History: En. Sec. 4, Ch. 88, L. 1947; amd. Sec. 1, Ch. 156, L. 1949; amd. Sec. 1, Ch. 7, L. 1969.

Amendments

The 1969 amendment rewrote this section to restrict the operation of license agents to a single business location as stated in the certificate of appointment.

Effective Date

Section 2 of Ch. 7, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

26-229. Wildlife conservation license required for purchase of hunting, fishing or trapping license. It shall be unlawful for any person or persons to purchase any hunting, fishing or trapping license without first having obtained a wildlife conservation license as hereinafter provided.

History: En. Sec. 1, Ch. 172, L. 1969.

Title of Act

An act requiring persons purchasing hunting, fishing and trapping licenses to possess a wildlife conservation license, and

providing that fees for such purchases be deposited with the state treasurer in the earmarked revenue fund to the credit of the state fish and game commission in accordance with the provisions of section 26-121, R. C. M. 1947.

26-230. Application—hunting, fishing or trapping license tags to be affixed or recorded on wildlife conservation license—fees—expiration. A wildlife conservation license shall be sold upon written application in such form and containing his name, age, occupation, place of residence, post-office address, length of time in the state of Montana, whether a citizen of the United States or an alien and present a drivers license or other identification to substantiate such information and shall be subscribed by the applicant. Hunting, fishing or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to such regulations as the commission may prescribe. Residents, as defined by section 26-202.3, may purchase a resident's license for a fee of twenty-five cents (\$.25) and all others a nonresident's license for a fee of one dollar (\$1). Licenses issued shall be void after the thirtieth (30th) day of April next succeeding their issuance.

History: En. Sec. 2, Ch. 172, L. 1969.

26-231. Unlawful sales of hunting, fishing or trapping licenses. It shall be unlawful for any license agent to sell any hunting, fishing or trapping license to any person who does not present his wildlife conservation license at the time of application for such licenses.

History: En. Sec. 3, Ch. 172, L. 1969.

26-232. Misdemeanor—penalty. Any person who shall subscribe to any false statement in application for a wildlife conservation license or violate any other provision of this act shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished as provided in section 26-324.

History: En. Sec. 4, Ch. 172, L. 1969.

26-233. Disposition of fees. The fees from the wildlife conservation license shall be delivered to the state treasurer and deposited by him in the earmarked revenue fund to the credit of the state fish and game commission in accordance with the provisions of section 26-121.

History: En. Sec. 5, Ch. 172, L. 1969.

Effective Date

Section 6 of Ch. 172, Laws 1969 read
"This act is effective May 1, 1969."

CHAPTER 3—RESTRICTIONS ON TAKING FISH AND GAME—
OPEN AND CLOSED SEASONS

Section

- 26-301. Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.
- 26-307. Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions for bear.
- 26-307.2. Policy as to grizzly bear.
- 26-307.3. Regulatory powers of commission as to grizzly bear.
- 26-332. Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish.
- 26-345. Fire danger—area closed to hunting and fishing.

26-301. (3694) Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto. (1) * * * [Same as parent volume.]

(2) (a) and (b). * * * [Same as parent volume.]

(3) No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence, or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

(4) to (6). * * * [Same as parent volume.]

(7) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the commission shall declare an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging, the taking of paddlefish with long bow and arrow when the commission shall declare an open season when paddlefish may be taken by long bow and arrow, the taking of walleyed pike, sauger, northern pike and nongame fish with spear or gig when the commission

shall declare an open season for taking walleyed pike, sauger, northern pike and nongame fish with spear or gig, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed twelve (12) feet in length and four (4) feet in width, in such waters as may be designated by the commission.

(8) It shall be unlawful for anyone to use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up or harass game animals, game birds or fur-bearing animals.

(9) Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law.

History: En. Sec. 14, Ch. 238, L. 1921; re-en. Sec. 3694, R. C. M. 1921; amd. Sec. 5, Ch. 77, L. 1923; amd. Sec. 15, Ch. 192, L. 1925; amd. Sec. 12, Ch. 59, L. 1927; amd. Sec. 1, Ch. 162, L. 1931; amd. Sec. 1, Ch. 159, L. 1941; amd. Sec. 5, Ch. 224, L. 1947; amd. Sec. 1, Ch. 157, L. 1949; amd. Sec. 1, Ch. 126, L. 1951; amd. Sec. 1, Ch. 223, L. 1953; amd. Sec. 1, Ch. 193, L. 1955; amd. Sec. 1, Ch. 53, L. 1963; amd. Sec. 1, Ch. 34, L. 1967; amd. Sec. 1, Ch. 90, L. 1969; amd. Sec. 1, Ch. 201, L. 1969.

Compiler's Notes

This section was amended twice in 1969, once by Ch. 90 and once by Ch. 201. Neither amendatory act mentioned the other nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has

made a composite section incorporating both amendments.

Amendments

The 1969 amendment by chapter 90 inserted provision in subsection (7) permitting the commission to declare open seasons for taking walleyed pike, sauger and northern pike with spear or gig.

The 1969 amendment by ch. 201 inserted subsection (8) and renumbered former subsection (8) as subsection (9), and made a minor change in punctuation in subsection (3).

Effective Date

Section 2 of Ch. 201, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

26-306. (3695) Private artificial lake or pond, etc.

Artificial Ponds

Fish and game commission abused discretion in failing to renew previously issued licenses for one pond created by diverting water from creek to channel dry for forty years and for another pond created by spring-fed creek arising and

flowing into Yellowstone River entirely on licensee's property since ponds were entirely artificial and man-made within meaning of statute. *Paradise Rainbows v. Fish and Game Commission*, 148 M 412, 421 P 2d 717.

26-307. (3696) Waste of fish or game—hunting or fishing during closed season—killing more than one game animal—exceptions for bear. (1) It shall be unlawful and a misdemeanor for any person responsible for the death of any game animal of this state, excepting grizzly, black and brown bear, to detach or remove from the carcass only the head, hide, antlers, tusks or teeth, or any or all of aforesaid parts, or to waste any part of any game animal, game bird, or game fish suitable for food, or to abandon the carcass of any game animal in the field, except black and brown bear,

which need have removed and taken from the carcass only the head or the hide of such bear, and except grizzly bear, which need have removed and taken from the carcass only the head and hide and such other parts as the state fish and game commission may demand for scientific purposes. All parts of grizzly bear demanded by the commission for scientific purposes must be delivered to an officer or employee of the commission for inspection as soon as possible after removal and the commission shall return to the licensee any bone structure and skull within one year upon written request. The hide shall be returned immediately.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 15, Ch. 238, L. 1921; re-en. Sec. 3696, R. C. M. 1921; amd. Sec. 7, Ch. 77, L. 1923; amd. Sec. 16, Ch. 192, L. 1925; amd. Sec. 13, Ch. 59, L. 1927; amd. Sec. 1, Ch. 152, L. 1931; amd. Sec. 1, Ch. 160, L. 1941; amd. Sec. 1, Ch. 158, L. 1955; amd. Sec. 1, Ch. 40, L. 1961; amd. Sec. 3, Ch. 134, L. 1969.

Amendments

The 1969 amendment added the provisions in subsection (1) relating to delivery of grizzly bear parts to the commission.

Effective Date

Section 4 of Ch. 134, Laws 1969 pro-

vided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

Seasons on Indian Reservation

Conviction of non-Indian for killing two bull elk on Crow Indian Reservation during season closed by state fish and game laws was not in conflict with act of Congress providing a penalty for trespass to possessory rights of reservation Indians nor in conflict with Montana Enabling Act providing that Indian lands shall remain under the absolute jurisdiction and control of Congress of United States. State ex rel. Nepstad v. Danielson, 149 M 438, 427 P 2d 689.

26-307.2. Policy as to grizzly bear. It is hereby declared the policy of the state of Montana to protect, conserve and manage grizzly bear as a rare species of Montana wildlife.

History: En. Sec. 1, Ch. 134, L. 1969.

Title of Act

An act to protect, conserve and manage grizzly bear as a rare species of Montana wildlife, to provide the state fish and game commission with authority to promulgate such regulations as may

be necessary for the protection, conservation and management of grizzly bear, and to amend section 26-307, R. C. M. 1947, by providing that such parts of grizzly bear as the commission shall demand must be removed and delivered to an officer or employee of the commission.

26-307.3. Regulatory powers of commission as to grizzly bear. The state fish and game commission shall have authority to provide open and closed seasons; means of taking; shooting hours; tagging requirements for carcasses, skulls and hides; possession limits; and requirements for transportation, exportation and importation of grizzly bear.

History: En. Sec. 2, Ch. 134, L. 1969.

26-332. (3714) Method of catching fish—use of traps, seines and nets—restrictions concerning possession and sale of fish. Every person who takes or catches fish in any of the waters of this state except with hook and line held in hand or line and hook attached to rod or pole held in hand, or who takes or catches fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries, or who takes or catches fish by means of the use of fishtraps, grab hooks, seines, nets, or other similar means for catching fish, shall be guilty of a

misdeemeanor and upon conviction thereof, shall be punished as provided for in section 26-324, and the amendments thereto; provided, however, that the Montana fish and game commission shall have the power, authority, and jurisdiction, to designate such waters within the state of Montana, wherein, in the judgment of the members of said commission, spears or gigs may be used for taking walleyed pike, sauger, northern pike and nongame fish, and traps, seines, or nets, and rubber or spring propelled spears when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of nongame fish and to close such waters so designated at the discretion of the commission, and to permit the taking of black bass in Flathead Lake, the taking of all fish by said means in said waters when so designated to be done under such rules and regulations as said commission may prescribe with reference thereto, and under the supervision of said commission, and all such nongame fish so taken may be possessed and sold in such manner and under such restrictions as said commission may direct, all fish other than those herein designated so taken under said rules and regulations when prescribed by said commission, shall be returned uninjured to the waters from which they were taken.

History: En. Sec. 22, Ch. 173, L. 1917; re-en. Sec. 3714, R. C. M. 1921; amd. Sec. 16, Sec. 77, L. 1923; amd. Sec. 25, Ch. 192, L. 1925; amd. Sec. 18, Ch. 59, L. 1927; amd. Sec. 1, Ch. 44, L. 1959; amd. Sec. 2, Ch. 90, L. 1969.

Amendments

The 1969 amendment inserted "spears or gigs * * * nongame fish, and" in the proviso and inserted "nongame" before "fish so taken" near the end of the section.

26-345. Fire danger—Area closed to hunting and fishing. When the fire danger becomes so extreme that the governor of the state of Montana upon the advice and recommendation of the Montana state forester closes an area to trespass because of fire danger, that area shall automatically become closed to any hunting or fishing and shall remain closed so long as the first closure remains in effect.

History: En. Sec. 1, Ch. 57, L. 1969.

hunting or fishing season during periods of extreme fire danger.

Title of Act

An act allowing for the closure of the

CHAPTER 4—BEAVER—TRAPPING—LICENSE—PROTECTION

26-401. (3722) Repealed.

Repeal

Section 26-401 (Sec. 38, Ch. 173, L. 1917; Sec. 1, Ch. 197, L. 1919; Sec. 17, Ch. 77, L. 1923; Sec. 19, Ch. 59, L. 1927; Sec. 1, Ch. 167, L. 1935; Sec. 15, Ch.

224, L. 1947; Sec. 1, Ch. 153, L. 1953; Sec. 1, Ch. 24, L. 1957; Sec. 1, Ch. 35, L. 1967), relating to protection of beaver, was repealed by Sec. 1, Ch. 56, Laws 1969, effective September 1, 1969.

CHAPTER 12—PERMITS FOR BREEDING GAME BIRDS AND ANIMALS —OTHER REGULATIONS

Section

26-1205. Regulation of roadside menageries or zoos—definitions.

26-1206. Permits—adoption and enforcement of regulations.

26-1207. Permit required—application—fee—expiration and renewal—inapplicable to governmental entity—misdeemeanor—compliance with standards—transferring permit.

- 26-1208. Permit for additional animals—application—conditions of issuance—capture of wild animals—ownership to remain in state—regulation of sales and transfers.
- 26-1209. Menagerie permit not a commercial game propagating permit—restrictions on disposal of birds or animals and offspring.
- 26-1210. Inspection—permit revocation—redemption of wildlife.
- 26-1211. Enforcement—penalty—confiscation or disposal of illegally kept animals—appeal.
- 26-1212. Disposal of fines, bonds or penalties—fees.

26-1205. Regulation of roadside menageries or zoos—definitions. As used in this act, unless the context clearly indicates otherwise:

- (1) "Commission" means the Montana fish and game commission;
- (2) "Roadside menagerie or zoo" means any place where one (1) or more wild animals, including birds, reptiles, and the like are kept in captivity, for the evident purpose of exhibition or attracting trade, but does not include the exhibition of any animal by any educational institution or in any zoological garden chartered as a nonprofit corporation by the state nor animals exhibited by any traveling theatrical exhibition or circus;
- (3) "Wild animal" means any animal wild by nature as distinguished from the common domestic animals, whether or not such animal was bred or reared in captivity, and includes birds and reptiles;
- (4) "Director" means the director of the state fish and game commission.

History: En. Sec. 1, Ch. 130, L. 1969. commission to control and regulate roadside menageries or zoos.

Title of Act

An act to require the fish and game

26-1206. Permits—adoption and enforcement of regulations. (1) The commission shall grant permits for roadside menageries or zoos.

(2) The commission shall adopt and enforce reasonable regulations for the housing, care, treatment, feeding and sanitation of animals kept in roadside menageries, and for the protection of the public from injury by such animals.

History: En. Sec. 2, Ch. 130, L. 1969.

26-1207. Permit required—application—fee—expiration and renewal—inapplicable to governmental entity—misdemeanor—compliance with standards—transferring permit. (1) It is unlawful for any person to operate a roadside menagerie without a permit. Application for a permit shall be made to the director on a form prescribed by him. The annual permit fee for five (5) or less animals shall be ten dollars (\$10.00). The annual permit fee for more than five (5) animals shall be twenty-five dollars (\$25.00). Permits shall expire on December 31, but may be renewed upon payment of the annual fee. This section shall not apply to the United States, the state of Montana, or any county or city. Any person who shall subscribe to any false statement in application for a permit shall be guilty of a misdemeanor.

(2) No permit shall be granted by the commission until it has satisfactorily verified that the provisions for housing and caring for such

animals and for protecting the public are proper and adequate and in accordance with the standards established by the commission.

(3) A permit is not transferable to another person unless the roadside menagerie or zoo to which it pertains is also transferred to the same person. The director's approval must be obtained prior to such permit transfer and prior to a transfer of any wild animals held under the permit.

History: En. Sec. 3, Ch. 130, L. 1969.

26-1208. Permit for additional animals—application—conditions of issuance—capture of wild animals—ownership to remain in state—regulation of sales and transfers. It is unlawful to obtain wild animals for a menagerie or zoo by capture from the wild or by purchase except in accordance with the terms of a permit. Application for such permit shall be made to the director on a form prescribed by him. After investigation by the department, the director may issue such permit without charge if he finds (a) that all provisions of this act and of the commission regulations are complied with by the applicant; and (b) that the number and species of wildlife desired is not excessive under the circumstances. If wild animals are to be obtained by capture, the permit shall designate the number and the means of capture, but ownership of the wild animals captured shall remain in the state of Montana. Nongame animals may be bought, sold or transferred under such regulations as the fish and game commission may prescribe.

History: En. Sec. 4, Ch. 130, L. 1969.

26-1209. Menagerie permit not a commercial game propagating permit—restrictions on disposal of birds or animals and offspring.—A menagerie permit cannot be construed as a commercial game propagating permit and the holder of such permit must not, under any circumstances, sell or attempt to sell any of the original game birds or game animals or the progeny thereof. A game propagating permit is required to propagate and sell game birds and game animals for commercial purposes. A fur-farming permit is required to propagate and sell fur-bearing animals. All offspring of game animals, game birds or fur-bearing animals are the property of the state wherein the menagerie is located, and must be disposed of by the state.

History: En. Sec. 5, Ch. 130, L. 1969.

26-1210. Inspection — permit revocation — redemption of wildlife. All roadside menageries or zoos and all equipment used in connection therewith shall be open to inspection at all reasonable hours. If upon inspection it is found that the menagerie or zoo is not being operated in accordance with this act or with the commission regulations, the director shall revoke the permit without right of renewal and shall redeem possession of all wildlife obtained by capture or unlawful propagation.

History: En. Sec. 6, Ch. 130, L. 1969.

26-1211. Enforcement—penalty—confiscation or disposal of illegally kept animals—appeal. The provisions of this act shall be enforced by any state fish and game warden or any other legally authorized officer. Any per-

son violating the provisions of this act shall, upon conviction, be punished by a fine of not more than two hundred fifty dollars (\$250.00), imprisonment for a period of not more than ten (10) days, or both, and at the discretion of the court the permit and all rights and privileges inherent therein may be forfeited. Any animals being kept in violation of any section of this act may be confiscated or ordered disposed of at the discretion of the state fish and game director. The permittee may appeal to the commission within twenty (20) days of the date of the order to confiscate and the commission shall hold a hearing on such an appeal and the decision of the commission shall be final.

History: En. Sec. 7, Ch. 130, L. 1969.

26-1212. Disposal of fines, bonds or penalties—fees. Fines, bonds or penalties shall be administered and disposed of in accordance with the provisions of section 26-1001. Fees obtained under this act shall be deposited with the state treasurer and credited to the earmarked revenue fund, fish and game account.

History: En. Sec. 8, Ch. 130, L. 1969.

CHAPTER 17—IMPORTATION OF SALMONID FISH OR EGGS

Section

- 26-1701. Importation of salmonid fish or eggs unlawful unless certified free of infectious organisms.
- 26-1702. Infectious organisms dead—certification unnecessary.
- 26-1703. Information required in certificate.
- 26-1704. Rules and regulations—personnel.
- 26-1705. Penalty—misdemeanor.

26-1701. Importation of salmonid fish or eggs unlawful unless certified free of infectious organisms. It is unlawful to bring live or dead salmonid fish or eggs into the state of Montana for any purpose unless such importations are shipped direct from the hatchery where reared to destination, and are accompanied by a written certification that the importation or source is free of protozoan myxosoma cerebralis, the causative agent of so-called "whirling disease," and such other infectious organisms as the state fish and game commission may specify. Such certification shall be made in the state of origin by a fish pathologist designated for this purpose by the United States secretary of the interior or by the state fish and game director. Certification of the source may be by inspection of the hatchery of origin conducted annually or at such other times as the state fish and game director may order. If a copy of a current inspection report, certifying that the hatchery of origin is free of protozoan myxosoma cerebralis, and such other infectious organisms as the state fish and game commission may direct, is not attached to each shipment from such hatchery, then each shipment must be inspected and certified.

History: En. Sec. 1, Ch. 10, L. 1969.

Title of Act

An act to provide that salmonid fish

and eggs imported into Montana be certified free of certain diseases, and providing an effective date.

26-1702. Infectious organisms dead — certification unnecessary. Nothing in this act shall restrict the importation and transportation of dead

salmonid fish or eggs when such fish or eggs have been processed or prepared in a manner whereby all spores of the protozoan myxosoma cerebralis, and such other infectious organisms as the state fish and game commission may specify, have been killed. Salmon caught and brought directly into North America and transported into Montana for processing or sale, or any salmonid caught wild in North America shall be exempt from the requirement for certification.

History: En. Sec. 2, Ch. 10, L. 1969.

26-1703. Information required in certificate. The certificate required by this section shall consist of a statement in the English language, printed or typewritten, stating that the shipment of fish or eggs is free from protozoan myxosoma cerebralis as determined by the methods outlined in Fish Disease Leaflet 9 printed July, 1968 by the bureau of sport fisheries and wildlife, United States department of the interior, and free of such other organisms as determined by such other methods as the state fish and game commission shall direct. Certificates of individual shipments will contain (1) the date and city of shipment in the state of origin and the anticipated date of arrival and city of destination in Montana, (2) carrier and carrier identification number, or truck license number if shipped by hatchery truck, (3) bill of lading number or airway bill number, if applicable, and (4) the handwritten signature, in ink, of the authorized certifying officer, and such other information as the state fish and game commission may specify.

History: En. Sec. 3, Ch. 10, L. 1969.

26-1704. Rules and regulations—personnel. The state fish and game commission may promulgate such rules and regulations and may employ such personnel for testing and inspection as are necessary to carry out the provisions of this act.

History: En. Sec. 4, Ch. 10, L. 1969.

26-1705. Penalty—misdemeanor. Any person violating any provision of this act shall be deemed guilty of a misdemeanor and shall be punished as prescribed in section 26-324.

History: En. Sec. 5, Ch. 10, L. 1969.

Effective Date

Section 6 of Ch. 10, Laws 1969 pro-

vided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

TITLE 27—FOOD AND DRUGS

Chapter

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CHAPTER 3—STATE BOARD OF FOOD DISTRIBUTORS—REGULATION OF FOOD STORES AND FOODSTUFFS

Section

27-306. Powers and duties of the state board of food distributors.

27-306. Powers and duties of the state board of food distributors. (a) and (b). * * * [Same as parent volume.]

(c) To report as provided in section 2 [82-4002] of this act.

(d) to (f). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 49, L. 1939;
amd. Sec. 10, Ch. 93, L. 1969.

proceedings annually to the governor with such information and recommendations as it deem proper, giving the names of all food stores licensed during the year and the items of the receipts and disbursements" in subsection (c).

Amendments

The 1969 amendment substituted "as provided in section 2 of this act" for "its

27-312. Quality of food sold—adulteration, etc.

Compiler's Notes

Sections 27-101 to 27-105, 27-108 to 27-120, contained in chapter 1, Title 27 referred to in subsection (c) of this section, have been repealed. Sections 27-101 to 27-105, 27-108 to 27-110, 27-112, 27-113, 27-

115 to 27-120 were repealed by Sec. 27, Ch. 307, Laws 1967. Section 27-111 was repealed by Sec. 12, Ch. 122, Laws 1965 and section 27-114 was repealed by Sec. 5, Ch. 119, Laws 1955.

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CHAPTER 7—FOOD, DRUG AND COSMETIC ACT

27-724, 27-725. Repealed.

Repeal

Sections 27-724 and 27-725 (Secs. 24, 25, Ch. 307, L. 1967), relating to the un-

lawful possession of hallucinogenic drugs and providing penalties therefor, were repealed by Sec. 14, Ch. 314, Laws 1969.

REVISED CODES OF MONTANA

VOLUME 3

Part 1

1969 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 3 (PART 1) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3
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For index see pocket supplement to Replacement Volume 9

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MONTANA REVISED CODES

TITLE 28—FORESTS AND FORESTRY

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CHAPTER 1—STATE BOARD OF FORESTRY—FOREST CONSERVATION AND FIRE PROTECTION

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28-105. Powers of board. To effectuate, accomplish and maintain the purposes of this act, the board is hereby authorized and empowered:

(a) To classify the forest land areas of the state for which conservation and fire protection measures are reasonably required, and to change or modify such classification from time to time as in its judgment shall be proper.

(b) To create organized forest fire protection districts; provided, however that before such district be created the board shall hold a hearing in any county in which such proposed district or a part thereof shall be included and shall give notice of such hearing at least twenty (20) days in advance thereof to all owners to be affected by such proposed district; service of such notice may be made by registered or certified mail or by publication in a newspaper published in the county in which such hearing is to be held, and if no newspaper is published in such county then in a newspaper having a general circulation therein; provided, further, that no forest fire protection district may be created unless approved in writing by vote of not less than fifty-one per cent (51%) of the owners representing at least fifty-one per cent (51%) of the acreage to be involved in such proposed forest fire protection district.

(c) To provide through the state forester for forest fire protection of any forest lands by the state forester's organization, or by contract or any other feasible means, in co-operation with any federal, state or other recognized agency or agencies.

(d) To make and enforce reasonable rules and regulations for the purpose of enforcing and accomplishing the provisions and purposes of this act; provided, however, such rules and regulations shall not conflict with the powers of the state board of land commissioners.

(e) To co-operate with the government of the United States and any

of its bureaus, services and agencies in accordance with federal statutes and regulations thereunder.

History: En. Sec. 5, Ch. 128, L. 1939; amd. Sec. 1, Ch. 90, L. 1959; amd. Sec. 1, Ch. 83, L. 1963; amd. Sec. 1, Ch. 149, L. 1967.

Effective Dates

Section 2 of Ch. 83, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 27, 1963.

Section 2 of Ch. 149, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

Amendments

The 1963 amendment added the provisions to paragraph (b).

The 1967 amendment in subsection (b) decreased from 75% to 51% the number of property owners required to approve creation of the proposed district.

28-109. Duty of owner of classified forest land. Every owner of forest land classified as such by the board is hereby required to furnish protection against the starting or existence, and to suppress the spread, of fire on such land during the full period of each forest fire season defined by this act. Such protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection to be prescribed by the board. If such owner does not provide for such protection and suppression, said board may provide the same, at a cost to the landowner of not more than ten cents (10¢) per acre per year for Class I land and not more than three cents (3¢) per acre per year for Class II land and in the event thereof, the owner of such land shall pay to the county treasurer of the county in which such land is situated, the charge for the same approved by the board, in accordance with the provisions of this act. No other charges shall be assessed those landowners participating, except in cases of proven negligence on the part of the landowner or his agent.

The forest land of Montana shall be classified for protection and assessment purposes as follows:

(a) Class I Land. Shall include all forest land primarily suitable for production of timber, forest land primarily suitable for joint use for timber production and the grazing of livestock as a permanent or semipermanent joint use or as a temporary joint use during the interim between logging and reforestation.

(b) Class II Land. Shall include all lands primarily suitable for grazing or other agricultural purposes, which are intermingled with or contiguous to the land described in subsection (a), above.

(c) Class III Land. Shall include lands primarily suitable for grazing or other agricultural purposes including structures and improvements which are within the forest fire protection areas but not meeting the detailed definitions of lands described in subsection (b), above. These lands may only be listed for payment when requested by the landowner at rates determined by the state forester and shall be submitted to the county assessor for collection and disposition as provided in section 28-111.

History: En. Sec. 9, Ch. 128, L. 1939; amd. Sec. 2, Ch. 141, L. 1941; amd. Sec. 1, Ch. 188, L. 1955; amd. Sec. 1, Ch. 91, L. 1959; amd. Sec. 1, Ch. 148, L. 1967.

Amendments

The 1967 amendment added subdivision (c) in the second paragraph.

Effective Date

Section 2 of Ch. 148, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

References

Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

28-111. Determination of costs of fire protection—certification—tax levy. The state forester will prepare a fire protection plan, for the approval of the board in which fire protection costs for each classification within each protection zone is determined. The board will establish the portion of the planned fire protection costs to be borne by the state, and the portion to be borne by the owners of classified forest land. The state forester will request the legislature to appropriate the state's portion as approved by the board. After the appropriation is made by the legislature, the board will cause an assessment to be made on the owners of classified forest land, as specified in section 28-109, sufficient to bring the total amount received to the amount specified in the approved plan.

On or before the second Tuesday in August of each year, the secretary shall determine the names of all owners who shall have failed to provide the forest fire protection for their lands required by this act, together with the description of such lands and the acreage thereof, and calculate the total amount due to the board from each such owner for such forest fire protection which shall not exceed the maximum hereinbefore specified.

The secretary shall submit a statement of the foregoing to the board and upon approval thereof by the board, the secretary shall certify in writing to the county assessor of each county, the names of such owners of forest lands in his county, together with a description of such lands and a statement of the amount so found to be due and owing by each of such owners to the board for forest fire protection.

Upon receiving such certificate from the secretary showing the amount due, the county assessor shall extend the amounts so certified upon the county tax rolls covering such lands, and such sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums so collected shall be promptly transmitted to the state treasurer, who is hereby required to deposit the same in the agency fund to the credit of the state forester.

History: En. Sec. 11, Ch. 128, L. 1939; amd. Sec. 1, Ch. 95, L. 1959; amd. Sec. 215, Ch. 147, L. 1963.

tence in the fourth paragraph, substituted "the agency fund to the credit of the state forester" for "a special fund designated the foresters' co-operative work fund, as provided for in section 81-1410."

Amendment

The 1963 amendment, in the last sen-

28-119. Sawdust piles—restrictions. Prior to each fire season, all persons, firms or corporations, creating or responsible for mill waste within the forest areas will treat, dispose of, remove or reduce the hazards created so that such accumulation of sawmilling waste does not constitute a fire hazard.

No sawmill located within or contiguous to forest lands shall accumulate in one pile, sawdust in excess of an amount resulting from the

sawing of five hundred thousand (500,000) feet log scale of sawlogs, provided, however, that a larger sawdust pile may be accumulated when there is no reasonable danger of fire therefrom and a permit for the additional accumulation is granted by the state forester. In the event that burning is the disposal method elected, each sawdust pile so accumulated shall be prepared for burning by cribbing the base of each pile with slabs and burned in accordance with regulations issued by the board of forestry.

History: En. Sec. 19, Ch. 128, L. 1939; amd. Sec. 1, Ch. 222, L. 1955; amd. Sec. 1, Ch. 195, L. 1969.

Amendments

The 1969 amendment inserted the first paragraph and inserted "In the event that burning is the disposal method elected," in the last sentence of the second paragraph.

28-123. Disposal of moneys. The following funds may be expended as directed by the board for fire prevention, detection and suppression: All moneys collected by county treasurers as assessments on forest lands for forest protection; moneys collected for the abatement of public nuisances; all fines collected for the violations of this act; the state's share of the co-operative fire protection funds allocated by the federal government and any other funds provided for the purposes herein indicated. All other co-operative funds collected, appropriated or allocated for the use of the state forester, including funds for the removal of slash hazards resulting from logging or other wood operations on state and private forest lands, those provided for the purpose of helping to maintain the maximum productivity of the forests of the state, those provided for purposes designed to assist the farmers of the state in the establishment of wind-breaks and woodlots in localities where such forest plantings are helpful, and funds for other co-operative work, shall not be expended except for the specific purposes for which the same were collected, appropriated or allocated.

History: En. Sec. 23, Ch. 128, L. 1939; amd. Sec. 217, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted a sentence at the beginning of the section which read: "In compliance with section 81-1410,

all moneys received from all public agencies, private agencies and individuals co-operating with the state forester or the board of forestry, shall be deposited with the state treasurer and placed to the credit of the foresters' co-operative work fund."

28-124. Disbursement of moneys. All co-operative moneys collected under the authority of section 28-111 and appropriated or allocated for the use of the state forester and deposited with the state treasurer shall be transferred to the earmarked revenue fund. Such moneys may then be paid out after approval and request of the said board and all vouchers or claims shall be signed on behalf of the said board by the secretary thereof.

History: En. Sec. 24, Ch. 128, L. 1939; amd. Sec. 218, Ch. 147, L. 1963.

Amendment

The 1963 amendment divided the former first sentence into two sentences; inserted

"under the authority of section 28-111 and" after "collected"; deleted "in the foresters' co-operative work fund" after "state treasurer"; inserted "transferred to the earmarked revenue fund" at the end of the first sentence and "Such moneys

may then be" at the beginning of the second sentence; and deleted a former second sentence which read, "The state board of examiners is hereby authorized to approve for payment (out of any moneys available for purposes designated)

all claims properly executed and submitted in the manner provided by law to the person, firm, corporation or public or private agency entitled thereto in compliance with the provisions of this act."

CHAPTER 3—ESTABLISHMENT OF STATE FOREST AND CONSERVATION EXPERIMENT STATION

Section 28-304. Reports—disposition of income.

28-304. Reports—disposition of income. The state board of education may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the state board of education may direct, and as the interests of the state and of science and industry may demand.

Income received by the station shall be deposited in the state treasury and used for the purposes of administering this act.

History: En. Sec. 4, Ch. 141, L. 1937;
amd. Sec. 234, Ch. 147, L. 1963.

Amendment
The 1963 amendment added the second paragraph.

CHAPTER 6—PROTECTION AND CONSERVATION OF FOREST AND FARM RESOURCES BY COUNTY COMMISSIONERS

28-601. Authority of county commissioners to protect range, etc.

References

Stocking v. Johnson Flying Service, 143
M 61, 387 P 2d 312.

28-603. Powers of board.

References

Stocking v. Johnson Flying Service, 143
M 61, 387 P 2d 312.

CHAPTER 7—TRANSPORTATION OF CONIFEROUS TREES

Section 28-701. Bill of sale required for transportation of coniferous trees on highway.

28-701. Bill of sale required for transportation of coniferous trees on highway. (1) It shall be unlawful and constitute a misdemeanor for any person to transport on the highways of this state, more than ten (10) coniferous trees without having in his possession a bill of sale showing his title for the trees. The bill of sale shall specify:

- (a) the date of its execution;
- (b) the name and address of the vendor or donor of the trees;
- (c) the name and address of the vendee or donee of the trees;
- (d) the number of trees, by species, sold or transferred by the bill of sale; and

(e) the shipping yards or the property from which the trees were taken.

(2) The foregoing provisions do not apply to:

(a) the transportation of trees with their roots intact;

(b) the transportation of logs, poles, pilings or other forest products from which substantially all the limbs and branches have been removed;

(c) the transportation of coniferous trees by the owner of the land from which they were taken or his agents;

(d) the transportation of coniferous trees by a common carrier.

History: En. Sec. 1, Ch. 137, L. 1967.

Title of Act

An act declaring it unlawful to transport on the highways of this state more

than ten (10) coniferous trees, unless the transporter has a bill of sale in his possession showing his title for the trees and providing a penalty for violation of this act.

TITLE 29—FRAUDULENT CONVEYANCES

CHAPTER 1—UNIFORM FRAUDULENT CONVEYANCE ACT

29-101. Definition of terms.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have

adopted the Uniform Fraudulent Conveyance Act: New Mexico, Ohio, and Virgin Islands.

29-105. Conveyances by persons in business.

Joinder of Actions

A creditor may join with his cause of action alleging indebtedness a second cause of action alleging that debtor's giving of mortgages and conveyance of certain property was without fair considera-

tion and made him insolvent, and a third cause of action alleging that after executing the mortgages, he had unreasonably small capital in his business. *Cahill-Mooney Constr. Co. v. Ayres*, 140 M 464, 373 P 2d 703, 709.

29-109. Rights of creditors whose claims have matured.

Money Judgment

The right to seek a money judgment is merely collateral to the primary right to

set aside the conveyance. *Cahill-Mooney Constr. Co. v. Ayres*, 140 M 464, 373 P 2d 703, 705.

CHAPTER 2—CERTAIN INSTRUMENTS AND TRANSFERS, WHEN VOID

29-206. (6944) Other provisions.

Compiler's Notes

Sections 18-201 to 18-205, referred to in this section in the parent volume, were

repealed by Sec. 10-102, Ch. 264, Laws 1963.

29-210. (8606) Question of fraud—how determined.

Sufficiency of Evidence

Finding of district court that transferor of property had no intent to defraud creditors was supported by substantial evidence of: a substantial cash payment to transferor; application of entire proceeds to transferor's debts; lack of secrecy in transaction; application of wife's interest in part of property transferred to hus-

band's debts; sale of fractional interest in mother's estate to brother also holding fractional interest therein, who presumably would be willing to pay more than stranger; and apparent existence of sufficient remaining assets with which to discharge transferor's remaining indebtedness. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.

TITLE 30—GUARANTY, INDEMNITY AND SURETYSHIP

Chapter 6. Letters of credit, Repealed—Section 10-102, Chapter 264, Laws of 1963.

CHAPTER 2—GUARANTORS—LIABILITY AND EXONERATION

30-208. (8188) What dealings with debtor exonerate guarantor.

Rescission of Contract by Creditor

Where vendees of real estate abandoned premises with the knowledge of vendors, who repossessed by permitting another party to occupy and served a notice of cancellation of the contract for sale upon vendees, vendors, by such rescission of contract, lost their right to bring action

against vendees' guarantor for unpaid purchase price. *Scott v. Kyhl*, 141 M 523, 379 P 2d 803.

References

United States v. Helena Office Supply Co., 256 F Supp 53, 54.

CHAPTER 3—INDEMNITY

30-301. (8163) Indemnity defined.

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

30-307. (8169) Rules for interpreting agreement of indemnity.

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

30-308. (8170) When person indemnifying is a surety.

References

Western Constr. Equipment Co. v. Mosby's, Inc., 146 M 313, 406 P 2d 165.

CHAPTER 4—SURETYSHIP—SURETIES AND THEIR LIABILITY

30-407. (8201) Surety discharged by certain acts of the creditor.

Impairment of Remedies or Rights

Under subdivisions 1 and 2 of this section a surety is discharged when his remedies or rights are impaired by an act of the creditor. *United States v. Helena Office Supply Co.*, 256 F Supp 53, 54.

Prejudice of Surety Required for Release

Subdivision 3 of this section and section 30-502 relieve a surety in cases of omission or neglect, but only after a request by the surety that the creditor proceed.

United States v. Helena Office Supply Co., 256 F Supp 53, 54.

Rescission of Contract by Creditor

Where vendees of real estate abandoned premises with the knowledge of vendors, who repossessed by permitting another party to occupy and served a notice of cancellation of the contract for sale upon vendees, vendor, by such rescission of contract, lost their right to bring action against vendees' guarantor for unpaid purchase price. *Scott v. Kyhl*, 141 M 523, 379 P 2d 803.

CHAPTER 5—RIGHTS OF SURETIES AND CREDITORS

30-502. (8203) Surety may require the creditor to proceed, etc.

Prejudice of Surety Required for Release

Subdivision 3 of section 30-407 and this section relieve a surety in cases of omis-

sion or neglect, but only after a request by the surety that the creditor proceed. *United States v. Helena Office Supply Co.*, 256 F Supp 53, 54.

CHAPTER 6—LETTERS OF CREDIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

30-601 to 30-609. (8210 to 8218) **Repealed.**

Repeal

These sections (Secs. 3710 to 3718, Civ. C. 1895; Secs. 5695 to 5703, Rev. C. 1907; Secs. 8210 to 8218, R. C. M. 1921), relat-

ing to letters of credit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 31—HIGHWAY PATROL

- Chapter 1. Montana highway patrol—creation—powers and duties, 31-104, 31-105, 31-110, 31-114, 31-117, 31-123, 31-126 to 31-130, 31-135, 31-138, 31-146, 31-147, 31-149, 31-163 to 31-169.
2. Highway patrolmen's retirement system, 31-201, 31-205, 31-206, 31-209, 31-210, 31-222.

CHAPTER 1—MONTANA HIGHWAY PATROL—CREATION— POWERS AND DUTIES

- Section 31-104. Chief—appointment—tenure of office—salary—supervisory power—resident requirement.
- 31-105. Appointment and promotion of officers—replacements and additions—reserve patrolmen—salaries—qualifications—probationary training—tenure—disciplinary action—hearing—appeal.
- 31-110. Offenses for which arrest may be made by patrolmen—murder, etc.—patrolmen when police officers—forbidden to act in labor disputes—temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock.
- 31-114. Highway patrol—fees—fines and forfeitures.
- 31-117. Drivers' examination section of highway patrol.
- 31-123. Chief—board.
- 31-126. What persons are exempt from license.
- 31-127. What persons shall not be licensed.
- 31-128. Classification of chauffeurs—special restrictions.
- 31-129. Instruction permits and temporary licenses.
- 31-130. Application for license, instruction permit or motorcycle endorsement.
- 31-135. Licenses issued to operators and chauffeurs.
- 31-138. Duplicate certificates.
- 31-146. Mandatory revocation of license by board or chief upon proper authority.
- 31-147. Authority of board to suspend license or driving privilege or issue probationary license.
- 31-149. Period of suspension or revocation.
- 31-163. Driver license compact enacted—text.
- 31-164. Highway patrol board as licensing authority—information and documents furnished.
- 31-165. Reimbursement of compact administrator.
- 31-166. Governor as executive head.
- 31-167. Report to highway patrol board of suspension or revocation of licenses.
- 31-168. Offenses furnishing ground for suspension or revocation of license.
- 31-169. Review of administrative actions.

31-104. Chief—appointment—tenure of office—salary—supervisory power—resident requirement. The board shall select a highway patrol chief who shall have the rank of colonel and shall hold his office until his appointment has terminated for cause, as hereinafter set forth, and shall receive a salary fixed by the board with approval of the board of examiners within the limits of the legislative appropriation for such purpose, and necessary traveling expenses. The chief shall have direct control and supervision of all patrolmen, subject to the approval of the Montana highway patrol board. The person named as chief shall have been a continuous resident of Montana for at least five (5) years. The chief, with

the approval of the board and within the limits of any appropriation made available for such purposes, shall:

1. Designate the authority and responsibility in each such rank, grade and position;
2. Formulate standards, policies and qualifications in the selection of recruit patrolmen;
3. Prescribe the official uniform of the Montana highway patrol;
4. Station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;
5. Charge against each employee the value of property of the state, lost or destroyed through the carelessness or neglect of such employee;
6. Discharge, demote, or temporarily suspend after hearing as provided in section 31-105, any patrolman of the department;
7. Have purchased, or otherwise acquired, by the purchasing department of the state, motor equipment and all other equipment and commodities deemed by him essential to the efficient operation of the Montana highway patrol.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967.

Amendments

The 1967 amendment substituted "chief" for "supervisor" wherever it appears in the first paragraph; inserted "have the rank of colonel and shall" after "who shall"; substituted "fixed by the

board with approval of the board of examiners within the limits of the legislative appropriation for such purpose" for "of seven thousand dollars (\$7,000.00) per annum" after "shall receive a salary"; deleted "for such Montana highway patrol" at the end of the first paragraph; and substituted "patrolman" for "employee" in subparagraph 6.

31-105. Appointment and promotion of officers — replacements and additions — reserve patrolmen — salaries — qualifications — probationary training — tenure — disciplinary action — hearing — appeal. (1) Appointments and promotions. (a) The board shall designate captains, lieutenants, sergeants, and patrolmen in such numbers as the board may deem necessary, but within the limits of the legislative appropriation made available for such purposes.

(b) Replacements and additions to the highway patrol force shall be chosen in equal numbers from the twelve (12) highway districts, provided however, that if sufficient qualified applications are not received from any one district that the board may in its discretion substitute other qualified applicants from any other districts.

(c) Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States, shall on the return of the incumbents be placed in the patrol reserve, without pay; otherwise they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol.

(d) Captains, lieutenants and sergeants shall be selected from the patrolmen by the chief, subject to the approval of the highway patrol board. The duties and jurisdiction of the captains, lieutenants and sergeants shall be outlined, defined and under the control of the chief subject to the approval of the Montana highway patrol board.

(2) Salaries. (a) The Montana highway patrol board shall, within the limits of appropriations made available for such purpose, prepare a schedule of compensation and expenses which shall be uniform within all grades and submit it to the state board of examiners for their approval.

(b) The base salary of the captains, lieutenants, sergeants and patrolmen shall be fixed by the board, with the approval of the state board of examiners. In the event that a probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of patrolmen. These salaries shall be increased one per cent (1%) per year for each additional year of service.

(3) Qualifications. (a) Patrolmen shall possess the following qualifications:

- (i) Sound and active physical and mental condition.
- (ii) Good moral character.
- (iii) Resident of Montana for at least one (1) year immediately prior to appointment.
- (iv) Pass a satisfactory test in the operation of automobiles.
- (v) Citizens of the United States and state of Montana.

(4) Probationary training. (a) All new patrolmen shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the probationary patrolmen will automatically be discharged.

(b) All newly appointed captains, lieutenants and sergeants shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the highway patrol board for permanent appointments; otherwise the captains, lieutenants and sergeants will automatically revert to their previous ranks without prejudice.

(5) Tenure of office. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, or patrolman under and pursuant to the provisions of this act, except as provided in subsection (4) above, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one (1) or more of the causes specified in the following subsection.

(6) Suspension, demotion or discharge. Cause for suspension, demotion or discharge will be:

(a) Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.

(b) Gross neglect of duty or willful violation or disobedience of orders or regulations.

(c) Loitering about or entering places of ill fame, ill repute, or where gambling is known to be conducted or to be in progress, except in the immediate discharge of duty.

(d) Conduct unbecoming an officer.

(e) Drinking intoxicating liquor while using state-owned cars or in uniform, or being intoxicated in a public place.

(f) Sleeping while on duty.

(g) Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.

(h) Gross inefficiency in performing duties.

(i) Active participation in any political campaign by supporting or opposing, directly or indirectly, any political candidate, or contributing financially or otherwise, directly or indirectly, to the success or defeat of any political party or candidate.

(j) Willful disobedience of rules and regulations adopted by the board, governing the conduct and discipline of members of the patrol.

(7) Method of preferring charges. (a) The charge or charges against any patrolman shall be made in writing and shall be signed and sworn to by the person making the charge or charges.

(b) The written charge or charges shall be filed with the chief of the Montana highway patrol.

(c) Any charge or charges which could result in the suspension or discharge of the chief or a captain shall be filed directly with the highway patrol board.

(d) When charges are filed and the chief believes that such charge or charges constitute grounds for suspension, demotion or discharge, he shall order a hearing to be had thereon before the highway patrol board and fix a time for such hearing.

(e) When charges are filed and the chief believes such charge or charges do not constitute grounds for suspension, demotion or discharge he shall dismiss such charges.

(f) The highway patrol board shall have the authority to order the chief to file charges with the board when the chief in his judgment does not believe the charge or charges warrant a hearing.

(8) Authority to suspend, demote or discharge. (a) When the highway patrol chief has cause to believe that any member of the highway patrol has violated any of the hereinabove grounds for suspension, demotion or discharge, or his conduct has warranted reprimanding, he may, with the approval of the Montana highway patrol board, suspend, demote or reprimand the member.

(b) If the chief orders a hearing he may suspend such patrolman pending the rendition of the decision made in such case.

(9) Length of suspension—demotion pay status. (a) Any member under suspension shall be on leave without pay and for a period not to exceed thirty (30) days in time.

(b) In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

(10) Notification of hearing. (a) The chief shall, at least ten (10) days before the time appointed for a hearing, serve written notice specifying the charge or charges filed and stating the name of the person or persons making the charge or charges, on the accused patrolman personally, if his whereabouts is known, in the state of Montana.

(b) If at the time, the whereabouts of the accused patrolman is unknown, or if he be outside of the state of Montana, service may be made upon him by mailing the written notice to him at his last known place of residence in Montana.

(11) Hearing. (a) The highway patrol board shall be the authority to hear such charge or charges and render a decision and appropriate order.

(b) The highway patrol board shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and for that purpose issue subpoenas and cause the same to be served and executed in any part of the state.

(c) The accused patrolman shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf and shall be entitled to be represented by counsel at such hearing.

(d) The highway patrol board shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the chief and with the patrolman accused also.

(12) Disciplinary action. (a) If, after a hearing, the highway patrol board finds that any such charge or charges, made against the patrolman be true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

(b) If after the hearing, the highway patrol board finds that the charge or charges made against the patrolman not be true, the board shall reinstate the accused patrolman to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

(13) Right to appeal. (a) Any patrolman who is suspended, demoted, or discharged may have a right of appeal to the district court of Lewis and Clark county.

(b) Such appeal must be made within ten (10) days after such decision or determination of the highway patrol board.

(c) The district court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court.

(d) If the decision or determination of the highway patrol board shall be finally reversed or modified by the district court, the accused patrolman shall be reinstated in his position and the highway patrol board shall pay to the said patrolman any salary or wages withheld from him pending the determination of the charge or charges, or as may be directed by the court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

31-110. Offenses for which arrest may be made by patrolmen—murder, etc.—patrolmen when police officers—forbidden to act in labor disputes—

temporary control of traffic in cities and towns—investigations of accidents—inspection of livestock. In addition to the above duties, the highway patrol supervisor and all patrolmen are authorized under this act to make arrests for the following offenses committed; if committed in the presence of said supervisor or any of said patrolmen, or if committed in a rural district, upon the request of a peace officer, or if committed in a city or town of less than twenty-five hundred (2500) inhabitants, upon the request of any peace officer, or the mayor of said city or town: The crimes of murder, assault with a deadly weapon, arson, burglary, larceny, kidnapping, illegal transportation of narcotics, or violation of the Dyer act regarding the transportation of stolen automobiles. Provided, that such highway patrolmen shall have no authority and are expressly forbidden to make arrests in labor disputes or in preventing violence in connection with strikes, and shall not be permitted to perform any duties whatsoever in connection with labor disputes, strikes or boycotts.

Patrolmen shall be deemed police officers in making arrests in all offenses occurring on the highways and in the use of motor vehicles or the registration thereof, and for the purpose of serving warrants of arrest in connection with such violations.

The patrolmen are also hereby empowered to stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products; and whenever the patrolmen have good reason to believe that such livestock or livestock products have been stolen, they are empowered to take possession of the same until such livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965.

Amendment

The 1965 amendment deleted from the end of the first paragraph a clause reading "and shall not be permitted to congregate or act as a unit in one county to suppress riots or preserve the peace"; and deleted the former third paragraph, for text of which see parent volume.

Repealing Clause

Section 2 of Ch. 63, Laws 1965 repealed all acts parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 63, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

31-114. Highway patrol—fees—fines and forfeitures. All fees, fines and forfeitures collected in any court from persons apprehended or arrested by patrolmen for violation of this act and the laws and regulations relating to the use of state highways and the operation of vehicles thereon must be paid to the state treasurer of Montana and by him credited to the general fund of the state, except for that portion of the fines, as provided in section 4 [75-5304] of this act, which shall be paid into the automobile driver education account in the earmarked revenue fund; and at the time of payment of any such fee, fine or forfeiture there shall be filed with the state treasurer a complete statement showing the total of the fees, fines or forfeitures received or incurred,

which statement shall give the title of the court and cause and be subscribed to by the person or officer making such payments.

History: En. Sec. 14, Ch. 199, L. 1943; amd. Sec. 10, Ch. 226, L. 1965; amd. Sec. 9, Ch. 214, L. 1969.

driver education account in the earmarked revenue fund" after "general fund of the state."

The 1969 amendment substituted "except for that portion of the fines, as provided in section 4 of this act" for "except the penalty assessments levied and paid or provided for in section 4 of this act."

Amendments

The 1965 amendment inserted "except the penalty assessments levied and paid as provided for in section 4 of this act, which shall be paid into the automobile

31-117. Drivers' examination section of highway patrol. There is hereby created a drivers' examination section of the Montana highway patrol, under the direct control and supervision of the Montana highway patrol board. Said board shall maintain a permanent place of business at the state capitol and shall meet at least once each month for the purpose of transacting business either as the drivers' examining board, the highway patrol board, or jointly for the two. The board shall select a chief examiner, and deputy chief examiner, as many assistant chief examiners and examiners as it deems necessary and shall provide for the necessary clerical help.

The chief examiner, deputy chief examiner, assistant chief examiners and all examiners shall have the same qualifications as are required for members of the Montana highway patrol. The chief examiner shall rank as a captain, the deputy chief examiner as a lieutenant, the assistant chief examiners shall rank as sergeants, and the examiners shall rank as patrolmen.

History: En. Sec. 1, Ch. 267, L. 1947; amd. Sec. 1, Ch. 141, L. 1951; amd. Sec. 1, Ch. 101, L. 1957; amd. Sec. 1, Ch. 42, L. 1969.

Amendments

The 1969 amendment provided for the selection of a "deputy chief examiner" by the board.

31-123. Chief—board. (a) Chief. The chief of the Montana highway patrol.

(b) * * * [Same as parent volume.]

History: En. Sec. 7, Ch. 267, L. 1947; amd. Sec. 1, Ch. 155, L. 1969.

Amendments

The 1969 amendment substituted "chief" for "supervisor" in subsection (a).

31-126. What persons are exempt from license. The following persons are exempt from license hereunder:

1 to 3. * * * [Same as parent volume.]

4. A nonresident who is at least eighteen (18) years of age and who has in his immediate possession a valid chauffeur's license issued to him in his home state or country may operate a motor vehicle in this state either as an operator or chauffeur subject to the age limits applicable to chauffeurs in this state;

5 and 6. * * * [Same as parent volume.]

History: En. Sec. 10, Ch. 267, L. 1947; amd. Sec. 1, Ch. 95, L. 1955; amd. Sec. 1, Ch. 137, L. 1961; amd. Sec. 1, Ch. 133, L. 1969.

Amendments

The 1969 amendment, in subdivision (4), deleted a requirement that a nonresident be licensed as a chauffeur in Montana before accepting employment as a chauffeur for a Montana resident.

31-127. What persons shall not be licensed. The board shall not issue any license hereunder:

1. To any person, as an operator, who is under the age of sixteen (16) years, with these exceptions:

(a) The board may issue an operator's license to a person who is fifteen (15) years if he has passed a driver's education course approved by the Montana highway patrol and the superintendent of public instruction.

(b) The board may issue a restricted license as hereinafter provided to any person who is at least thirteen (13) years of age;

2 to 8. * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 267, L. 1947; amd. Sec. 1, Ch. 60, L. 1955; amd. Sec. 1, Ch. 227, L. 1965.

set out in the preliminary paragraph of subsection (1) from fifteen to sixteen; and inserted paragraph (1) (a).

Amendment

The 1965 amendment changed the format of subsection (1); increased the age

Cross-Reference

Driver education courses, secs. 75-5301 to 75-5309.

31-128. Classification of chauffeurs—special restrictions. (a). * * * [Same as parent volume.]

(b) No person who is under the age of twenty-one (21) years shall drive any school bus transporting school children or any motor vehicle when in use for the transportation of persons for compensation nor in either event until he has been licensed as a chauffeur for either such purpose and the license so indicates. The board shall not issue a chauffeur's license for either such purpose unless the applicant has had at least one (1) year of driving experience prior thereto and the board is fully satisfied as to the applicant's competency and fitness to be employed.

History: En. Sec. 12, Ch. 267, L. 1947; amd. Sec. 1, Ch. 26, L. 1969.

Amendments

The 1969 amendment, in subsection (b), deleted a requirement that three people certify an applicant's good character.

31-129. Instruction permits and temporary licenses. (a) Any person satisfying the age requirements specified in 31-127 (1), may apply to the board for an instruction permit. The board may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit which shall entitle the applicant, while having such permit in his immediate possession, to drive a motor vehicle upon the public highways for a period of six (6) months when accompanied by a licensed operator or chauffeur who is occupying a seat beside the driver.

(b) and (c). * * * [Same as parent volume.]

History: En. Sec. 13, Ch. 267, L. 1947; amd. Sec. 1, Ch. 120, L. 1961; amd. Sec. 1, Ch. 55, L. 1969.

Amendments

The 1969 amendment, in subsection (a),

substituted "satisfying the age requirement specified in 31-127 (1)" for "who is at least fifteen (15) years of age" and deleted an exception authorizing the holder of an instruction permit to operate a motorcycle.

31-130. Application for license, instruction permit or motorcycle endorsement. (a) Every application for an instruction permit, operator's or chauffeur's license or motorcycle endorsement shall be made upon a form furnished by the board. Every application shall be accompanied by the proper fee and payment of such fee shall entitle the applicant to not more than three attempts to pass the examination within a period of six (6) months from the date of application.

(b). * * * [Same as parent volume.]

(c) Whenever application is received from an applicant previously licensed by any other jurisdiction or jurisdictions, the board shall request a copy of such applicant's driving record from such previous licensing jurisdiction or jurisdictions. When received, such driving records shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

History: En. Sec. 14, Ch. 267, L. 1947; amd. Sec. 1, Ch. 28, L. 1969.

Amendments

The 1969 amendment inserted provisions for applications for "motorcycle endorsement" in subsection (a) and added subsection (c).

31-131. Application of minors.

References

Castle v. Thisted, 139 M 328, 363 P 2d 724, 725.

31-135. Licenses issued to operators and chauffeurs. (a) The highway patrol board shall have authority to appoint county treasurers and other qualified officers to act as its agent or agents for the sale of drivers' licenses, and shall make necessary rules and regulations governing such sales. The board, upon payment of four dollars (\$4), (of which sum five per cent (5%) shall be retained by the county treasurers for use of the county general fund) shall issue to every applicant qualifying therefor, an operator's or chauffeur's license as applied for, which license shall be purchased biennially on or before the operator's or chauffeur's birthday, and shall expire on the anniversary of the date of birth of the operator or chauffeur, two (2) years or less after the date of issue, and shall contain a photograph of such licensee in such size and form as may be prescribed by the highway patrol board, a distinguishing number issued to the licensee, the full name, date of birth, resident address, and a brief description of the licensee and either a facsimile of the signature of the licensee or a space upon which he shall write his signature in pen and ink, immediately upon receipt of the license. No license shall be valid until it has been so signed by the licensee.

(b) The board shall, when any person applies for renewal of an operator's or chauffeur's license, test the applicant's eyesight, and may also, in the board's discretion, have such applicant demonstrate his physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle. This examination shall not be required of any applicant who has successfully completed such an examination within the preceding five (5) year period.

(c) Whenever the board issues an original license to a person under the age of twenty-one (21) years, such license shall be designated and clearly marked as a "provisional license." Any license so designated and marked may be suspended by the board for a period of not more than twelve (12) months, when its record discloses that the licensee, subsequent to the issuance of such license, has been guilty of careless or negligent driving. Upon renewal as applicable to operator's licenses, the board may for any reasonable cause, as shown by its records, designate the renewal of the license as provisional, otherwise, a license in usual form shall be issued subject to other provisions of the laws of Montana.

(d) It shall be unlawful for any person to have in his possession or under his control, more than one (1) Montana operator's or chauffeur's license at any one time.

History: En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953; amd. Sec. 1, Ch. 249, L. 1961; amd. Sec. 1, Ch. 228, L. 1963; amd. Sec. 1, Ch. 23, L. 1967.

Amendments

The 1963 amendment completely rewrote subsection (b), for previous text of which see parent volume; and made a minor change in punctuation.

The 1967 amendment inserted "(of which sum * * * county general fund)" in the second sentence of subsection (a); and made minor changes in subsections (a) and (b).

Effective Date

Section 2 of Ch. 228, Laws 1963 provided the act should be in effect upon its passage and approval. Approved March 9, 1963.

Validity of Amendment

The 1961 amendment of this section [House Bill No. 342] was not rendered invalid because the deciding vote therein was cast by the lieutenant governor on the third reading, where at that time the senators then present and voting, were equally divided. *State ex rel. Easbey v. Highway Patrol Board*, 140 M 383, 372 P 2d 930, 939.

31-138. Duplicate certificates. In the event that an instruction permit or operator's or chauffeur's license issued under the provisions of this act is lost or destroyed, the person to whom the same was issued may, upon the payment of a fee of one dollar (\$1.00), obtain a duplicate, or substitute thereof, upon furnishing proof satisfactory to the board that such permit or license has been lost or destroyed.

History: En. Sec. 22, Ch. 267, L. 1947; amd. Sec. 1, Ch. 36, L. 1953; amd. Sec. 16, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee for duplicate certificates from 50¢ to \$1.00.

31-146. Mandatory revocation of license by board or chief upon proper authority. The board or chief upon proper authority shall forthwith revoke the license or operating privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction or forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become final:

1. * * * [Same as parent volume.]

2. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof;

3 to 6. * * * [Same as parent volume.]

History: En. Sec. 30, Ch. 267, L. 1947; amd. Sec. 1, Ch. 192, L. 1957; amd. Sec. 1, Ch. 125, L. 1961; amd. Sec. 2, Ch. 155, L. 1969.

Amendments

The 1969 amendment substituted "chief" for "supervisor" in the first paragraph and inserted "or willfully * * * motor vehicle" in subdivision (2).

31-147. Authority of board to suspend license or driving privilege or issue probationary license. (a) The board is hereby authorized to suspend the license or driving privilege of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

1. Has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

2. Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

3. Is an habitually reckless or negligent driver of a motor vehicle;

4. Is incompetent to drive a motor vehicle;

5. Has permitted an unlawful or fraudulent use of such license as specified in section 31-153;

6. Has committed an offense in another state which if committed in this state would be grounds for suspension or revocation; or

7. Has falsified his date of birth on his application for a driver's license.

(b). * * * [Same as parent volume.]

(c) Upon suspending the license of any person or upon placing such person on probation, as hereinbefore in this section authorized, the board shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty (20) days after receipt of such request in the county wherein the licensee resides unless the board and the licensee agree that such hearing may be held in some other county. Upon such hearing the chief or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon such hearing the board shall either rescind its order of suspension or probation, or, good cause appearing therefor, may affirm, reduce or extend the period of probation or suspension of such license.

History: En. Sec. 31, Ch. 267, L. 1947; amd. Sec. 1, Ch. 101, L. 1961; amd. Sec. 1, Ch. 137, L. 1969.

Amendments

The 1969 amendment deleted former subdivision (a)(1) authorizing suspension for "offense for which mandatory revocation of license is required upon conviction," designated former subdivisions (a)(2) to (a)(8) as (a)(1) to (a)(7), added "as specified in section 31-153" to subdivision (a)(5), and substituted "chief" for "supervisor" in subsection (c).

Suspension of License Not Punishment

The purpose and nature of the suspension of a driver's license is for the protection of the unsuspecting public and does not constitute "punishment" as understood within the meaning of the law, so that highway patrol board can take into consideration past driving violations before a previous suspension of a driver's license in suspending his license again. In re France, 147 M 283, 411 P 2d 732.

31-149. Period of suspension or revocation. (a) The board shall not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one (1) year, except as permitted under sections 31-148, 31-155, 53-424 and 53-430, R. C. M. 1947.

(b) Any person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked shall not be entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, such person may make application for a new license as provided by law, but the board shall not then issue a new license unless and until it is satisfied after investigation of character, habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. Provided, however, when any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or narcotic drug, or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof, the board shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend or revoke the license or driving privilege of such person for a period of sixty (60) days. Upon receiving a report of a conviction or forfeiture of bail or collateral for a subsequent such offense, within five (5) years thereof, the board shall suspend or revoke the license or driving privilege of such person for a period of one (1) year.

(c) The revocation period for all revocations made mandatory by section 31-146, R. C. M. 1947, shall be one (1) year, except as provided in subsection (b) of this section.

History: En. Sec. 33, Ch. 267, L. 1947; amd. Sec. 1, Ch. 126, L. 1957; amd. Sec. 1, Ch. 161, L. 1961; amd. Sec. 1, Ch. 339, L. 1969.

ingly * * * a motor vehicle" after "narcotic drug" in subsection (b) and added subsection (c).

Amendments

The 1969 amendment inserted "or know-

References

In re France, 147 M 283, 411 P 2d 732.

31-163. Driver license compact enacted—text. This act shall be known and may be cited as the "Driver License Compact."

ARTICLE I—FINDINGS AND DECLARATION OF POLICY

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II—DEFINITIONS

As used in this compact:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III—REPORTS OF CONVICTION

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the

court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV—EFFECT OF CONVICTION

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V—APPLICATIONS FOR NEW LICENSES

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to

issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI—APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other co-operative arrangement between a party state and a nonparty state.

ARTICLE VII—COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six (6) months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall

remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 154, L. 1963.

Title of Act

An act to establish a stable and uniform basis for interstate co-operation in driver licensing and the reporting of convictions and to be known as the Driver License Compact; setting forth the basic purposes of the compact; defining certain terms used in act; requiring party state to report convictions to licensing authority of home state of licensee; providing party state may give same effect of conviction regardless of jurisdiction of occurrence; providing that license authority in party state shall not issue license to party whose license has been suspended, revoked or to

party who fails to surrender license of another party state; providing that adoption of compact will not nullify existing statutes; providing for administrator of act; providing for entry and withdrawal from compact; providing for construction and severability of act; providing that if any part of act held unconstitutional it shall not affect remaining parts of act; defining "licensing authority" and "executive head"; providing authority to furnish information to member states; providing that administrator shall not be entitled to additional compensation; requiring agencies or court to report to state agency; repealing all acts or parts of acts in conflict herewith.

31-164. Highway patrol board as licensing authority—information and documents furnished. As used in the compact, the term "licensing authority" with reference to this state, shall mean the Montana highway patrol board. Said board shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV and V of the compact.

History: En. Sec. 2, Ch. 154, L. 1963.

31-165. Reimbursement of compact administrator. The compact administrator provided for in Article VII of the compact shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

History: En. Sec. 3, Ch. 154, L. 1963.

31-166. Governor as executive head. As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

History: En. Sec. 4, Ch. 154, L. 1963.

31-167. Report to highway patrol board of suspension or revocation of licenses. Any court or other agency of this state, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking or otherwise limiting a license to drive, shall report any such action and the adjudication upon which it is based to the Montana highway patrol board within five (5) days on forms furnished by the Montana highway patrol board.

History: En. Sec. 5, Ch. 154, L. 1963.

31-168. Offenses furnishing ground for suspension or revocation of license. Items enumerated in Article IV (a), subsections (1), (2), (3)

and (4) [31-163] of this act refer specifically to sections 94-2507, 32-2142, 94-114 and 32-1202, Revised Codes of Montana, 1947, respectively.

In addition to convictions mentioned above the Montana highway patrol board for the purpose of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if such conduct had occurred in this state for convictions of: 1. perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (31-154, Revised Codes of Montana, 1947) and; 2. three (3) convictions of reckless driving committed within a period of twelve (12) months (32-2143, Revised Codes of Montana, 1947).

History: En. Sec. 6, Ch. 154, L. 1963.

31-169. Review of administrative actions. Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the "Driver License Compact" shall be subject to review pursuant to the provisions of section 31-152, Revised Codes of Montana, 1947, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

History: En. Sec. 8, Ch. 154, L. 1963.

pealed all acts or parts of acts in conflict therewith.

Repealing Clause

Section 7 of Ch. 154, Laws 1963 re-

CHAPTER 2—HIGHWAY PATROLMEN'S RETIREMENT SYSTEM

- Section 31-201. Definitions.
 31-205. Payments into the Montana highway patrolmen's retirement account—investment.
 31-206. Rules and regulations—actuarial data.
 31-209. Payments by contributors.
 31-210. Contributions by the state of Montana.
 31-222. Nomination of beneficiary.

31-201. Definitions. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions," the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary," shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired patrolman," any person in receipt of a retirement allowance under this act.

"Board," the Montana highway patrolmen's retirement board.

"Compulsory retirement age," sixty years of age.

"Contributor," any person who has accumulated deductions in the fund, standing to his credit.

"Final salary," the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

"Actuarial equivalent," the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Account," the Montana highway patrolmen's retirement account in the agency fund.

"Involuntary retirement," a retirement not for cause and before retirement age.

"Member's annuity," payments for life derived from contributions made by the contributor.

"Optional retirement age," the age at which a contributor may retire after twenty (20) years' service or more.

"Retirement age," the age at which a member retires after twenty-five (25) years of creditable service with the Montana highway patrol.

"Retirement allowance," the state annuity plus the member's annuity.

"State annuity," payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 37, L. 1945; amd. Sec. 1, Ch. 243, L. 1955; amd. Sec. 201, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the definition of "Account" for a paragraph reading, "'Fund,' the Montana highway patrolmen's retirement fund."

31-205. Payments into the Montana highway patrolmen's retirement account—investment. All appropriations made by the state of Montana, all contributions by members of the Montana highway patrol, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the state treasurer, who shall credit said payments to the Montana highway patrolmen's retirement account in the agency fund. Whenever there is on deposit in the Montana highway patrolmen's retirement account a sum in excess of twenty-five thousand dollars (\$25,000.00), such excess will be invested by the state board of land commissioners as part of the long term investment fund and any of the account less than twenty-five thousand dollars (\$25,000.00) in amount shall be invested by the state board of land commissioners as part of the short term investment fund when so directed by the Montana highway patrolmen's retirement board.

History: En. Sec. 5, Ch. 37, L. 1945; amd. Sec. 1, Ch. 158, L. 1949; amd. Sec. 1, Ch. 176, L. 1953; amd. Sec. 202, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the references to the "Montana highway patrolmen's retirement account in the agency fund" for references to the "Montana highway patrolmen's retirement fund."

31-206. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary, and is charged within the limitations of this act for its proper administration, operation, and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 37, L. 1945; amd. Sec. 3, Ch. 243, L. 1955; amd. Sec. 203, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "account" for "fund" in the last sentence.

31-209. Payments by contributors. Every member shall be required to contribute into the account a sum equal to five per cent (5%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account, provided that when a member has served twenty-five (25) years in the Montana highway patrol all payments by him and contributions to his credit from the account shall cease.

History: En. Sec. 9, Ch. 37, L. 1945; amd. Sec. 5, Ch. 243, L. 1955; amd. Sec. 204, Ch. 147, L. 1963.

posited to his credit in the account" for "credited to his account in the fund"; and substituted "account" for "fund" in two other places.

Amendment

The 1963 amendment substituted "de-

31-210. Contributions by the state of Montana. The state of Montana shall annually contribute to the account fifteen per cent (15%) of all moneys received by the state of Montana from the collection of the motor vehicle driver's license fee provided for under the laws of the state of Montana.

History: En. Sec. 10, Ch. 37, L. 1945; amd. Sec. 6, Ch. 243, L. 1955; amd. Sec. 205, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "account" for "fund."

31-214. Disability retirement allowance.

Evidence of Disability

State highway patrolman was not entitled to disability retirement allowance for total and permanent disability in light of evidence that claimant's condition did not prevent him from hunting, swimming and bowling and evidence of four medical

doctors that patrolman was not permanently disabled, notwithstanding evidence of osteopath that patrolman was totally and permanently disabled in so far as being highway patrolman. State ex rel. Spear v. State Highway Patrol Retirement Board, 149 M 7, 422 P 2d 348.

31-222. Nomination of beneficiary. Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board, and to change the beneficiary in like manner. Such designation and all changes must be filed with the board.

History: En. Sec. 22, Ch. 37, L. 1945; amd. Sec. 1, Ch. 107, L. 1967.

Effective Date

Section 2 of Ch. 107, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

Amendments

The 1967 amendment deleted "up until, but not after, the time of retirement" after "with the board" at the end of this section.

TITLE 32—HIGHWAYS, BRIDGES AND FERRIES

- Chapter 2. Road taxes and bonds, Repealed—Section 12-109, Chapter 197, Laws of 1965.
3. Supervision of public highways, 32-317 to 32-321.
 6. Special road districts, abolishment, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 9. Corrugated iron culverts, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 10. Obstructions and encroachments, 32-1021, 32-1022.
 11. Speed and traffic regulations, 32-1122, 32-1123, 32-1127, 32-1131.
 13. Good roads day, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 16. State highway commission and highway engineer—powers and duties, 32-1619, 32-1627 to 32-1629, 32-1629.1, 32-1630, 32-1631.
 18. Stock lane law, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 19. Montana toll bridge authority, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 20. Controlled access highways, Repealed—Section 12-109, Chapter 197, Laws of 1965.
 21. Uniform act regulating traffic on highways, 32-2134.1 to 32-2134.3, 32-2137, 32-2143.1, 32-2143.2, 32-2144, 32-2170, 32-2173, 32-2174, 32-2177, 32-2197, 32-2198, 32-21-105, 32-21-130, 32-21-132, 32-21-143.1 to 32-21-143.4, 32-21-149, 32-21-149.1, 32-21-150.1 to 32-21-150.3, 32-21-155.1, 32-21-163, 32-21-164, 32-21-166 to 32-21-175.
 22. Highway code—general provisions, 32-2201 to 32-2203.
 23. Classification of highways, 32-2301, 32-2302.
 24. Assent to federal aid—state highway commission, powers and duties, 32-2401 to 32-2427.
 25. State highway engineer and other employees, 32-2501 to 32-2503.
 26. Distribution and apportionment of highway construction funds, 32-2601, 32-2603 to 32-2611.
 27. Montana toll bridge authority, 32-2701 to 32-2716.
 28. Board of county commissioners responsibility for county roads, 32-2801 to 32-2815.
 29. Board of county commissioners responsibility for bridges and ferries, 32-2901 to 32-2907.
 30. County road superintendent, 32-3001 to 32-3007.
 31. Local improvement districts, 32-3101 to 32-3131.
 32. State vehicle fees—payment, expiration and disposition, 32-3201 to 32-3206.
 33. Additional truck, trailer and bus fees—sales tax on vehicles—excess weight penalties, 32-3301, 32-3302, 32-3302.1, 32-3303, 32-3304, 32-3304.1, 32-3305 to 32-3317.
 34. Fees for drive-away or tow-away transporters, 32-3401 to 32-3406.
 35. Bond issues for state toll bridges, 32-3501 to 32-3509.
 36. County tax levies for road and bridge construction, 32-3601 to 32-3605.
 37. Local use of registration and other vehicle fees, 32-3701 to 32-3707.
 38. County road and bridge bonds, 32-3801 to 32-3806.
 39. Acquisition and disposition of property by state, 32-3901 to 32-3931.
 40. Acquisition and disposition of property by county, 32-4001 to 32-4018.
 41. Contracts of state highway commission, 32-4101 to 32-4103.
 42. Contracts of counties and local improvement districts, 32-4201 to 32-4207.
 43. Control of access, 32-4301 to 32-4308, 32-4308.1, 32-4309 to 32-4311.
 44. Good roads day—obstructions, encroachments and debris on highways, 32-4401 to 32-4410.
 45. Junkyards along roads, 32-4513 to 32-4523.
 46. Traffic safety program, 32-4601 to 32-4607.
 47. Zoning and advertising regulation along highways, 32-4701 to 32-4714.

CHAPTER 1—HIGHWAYS—DEFINITIONS AND CLASSIFICATIONS

32-102 to 32-107. (1611 to 1616) Repealed.

Repeal

These sections (Sec. 10, p. 106, L. 1874;

Sec. 2600, Pol. C. 1895; Secs. 1, 3, 6, Ch. 44, L. 1903; Secs. 2 to 7, Ch. 72, L. 1913;

Secs. 2 to 7, Ch. 141, L. 1915; Secs. 2 to 7, Ch. 172, L. 1917; Sec. 1, Ch. 247, L. 1959), relating to definitions and classifications of highways, were repealed by Sec. 12-109,

Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-2203, 32-2301, 32-2808, and 32-4014.

CHAPTER 2—ROAD TAXES AND BONDS

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-201 to 32-208. (1617 to 1620) Repealed.

Repeal

These sections (Sec. 19, p. 110, L. 1874; Sec. 1, p. 119, L. 1885; Secs. 1796, 1837, 1838, 5th Div. Comp. Stat. 1887; Secs. 1, 3, p. 176, L. 1897; Sec. 1, p. 69, L. 1899; Secs. 11, 26, 27, Ch. 44, L. 1903; Secs. 1 to 4, Ch. 2, Ch. 72, L. 1913; Secs. 1 to 4, Ch. 2, Ch. 141, L. 1915; Secs. 1 to 4, Ch. 2, Ch.

172, L. 1917; Sec. 1, Ch. 2, L. 1933; Secs. 1 to 4, Ch. 69, L. 1945; Sec. 1, Ch. 145, L. 1947; Sec. 1, Ch. 149, L. 1947), relating to road taxes and bonds, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3601 to 32-3605 and 32-3801.

CHAPTER 3—SUPERVISION OF PUBLIC HIGHWAYS

- Section 32-317. Designation of emergency area near construction project.
 32-318. Notice of designation of emergency area—removal of designation.
 32-319. Livestock not to run at large in emergency area.
 32-320. Impounding of animals at large—notice to owner—fees and mileage.
 32-321. Penalty for violations.

32-302 to 32-314. (1622 to 1632) Repealed.

Repeal

These sections (Sec. 12, p. 119, L. 1873; Sec. 24, p. 113, L. 1874; Sec. 4, p. 118, L. 1885; Secs. 1801, 1802, 1805, 1834, 5th Div. Comp. Stat. 1887; Secs. 2632, 2695, 2700, 2701, 2710, 2711, 2720, 2740, 2741, Pol. C. 1895; Secs. 10, 33 to 36, 51, 52, Ch. 44, L. 1903; Secs. 1, 2, Ch. 76, L. 1905; Secs. 2 to 13, Ch. 3, Ch. 72, L. 1913; Secs. 2 to 13, Ch. 3, Ch. 141, L. 1915; Sec. 1, Ch. 106, L. 1917; Secs. 2 to 12, Ch. 3, Ch. 172, L. 1917; Secs. 1 to 4, Ch. 15, Ex. L. 1919; Sec. 1, Ch. 128, L. 1925;

Secs. 1, 2, Ch. 102, L. 1927; Secs. 1, 2, Ch. 21, L. 1929; Sec. 1, Ch. 59, L. 1929; Sec. 1, Ch. 81, L. 1929; Sec. 1, Ch. 176, L. 1929; Sec. 1, Ch. 179, L. 1931; Sec. 1, Ch. 102, L. 1947; Sec. 1, Ch. 84, L. 1953; Sec. 1, Ch. 109, L. 1955; Sec. 1, Ch. 116, L. 1957; Sec. 1, Ch. 128, L. 1959; Sec. 2, Ch. 260, L. 1965), relating to the functions of the county commissioners, county surveyors, and road supervisors with respect to roads, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2801 to 32-3007.

32-316. (1634) Repealed.

Repeal

This section (Sec. 2742, Pol. C. 1895; Sec. 53, Ch. 44, L. 1903; Sec. 3, Ch. 76, L. 1905; Sec. 14, Ch. 3, Ch. 72, L. 1913; Sec. 14, Ch. 3, Ch. 141, L. 1915; Sec. 13,

Ch. 3, Ch. 172, L. 1917), relating to records of county commissioners relating to roads, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2805.

32-317. Designation of emergency area near construction project. A board of county commissioners may designate a portion of a county or state secondary road as an emergency area if increased traffic due to a construction project threatens public safety.

History: En. Sec. 1, Ch. 118, L. 1963.

Title of Act

An act authorizing a board of county commissioners to designate a portion of a county or state secondary road as emer-

gency area if increased traffic due to a construction project threatens public safety; and prohibiting the running of livestock across the emergency area unless in transit under herd in the custody of an attendant; providing an effective date.

32-318. Notice of designation of emergency area—removal of designation. Notice of such designation shall be printed in a newspaper of general circulation in the county. The notice shall describe the portion of road to be designated as an emergency area and the reason for such designation. The board shall post the area or roads affected with adequate signs. The board shall remove the emergency designation within thirty days after the cessation of the increased traffic.

History: En. Sec. 2, Ch. 118, L. 1963.

32-319. Livestock not to run at large in emergency area. A person who owns or has custody of livestock shall not permit the livestock to run upon the emergency area unless the livestock are under herd in transit across the emergency area in the custody of an attendant.

History: En. Sec. 3, Ch. 118, L. 1963.

32-320. Impounding of animals at large—notice to owner—fees and mileage. A sheriff or other peace officer may impound livestock running on an emergency area without an attendant and shall notify the rightful owner of such impounded livestock. If the sheriff or peace officer cannot determine the rightful owner, then a state stock inspector or deputy state stock inspector of the county may be called to examine the livestock for brands to determine ownership. The rightful owners shall be notified by the inspector and the usual inspection fees and mileage shall be paid by the owner of such livestock.

History: En. Sec. 4, Ch. 118, L. 1963.

32-321. Penalty for violations. A person violating this act is guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars (\$10.00) or more than fifty dollars (\$50.00) for each violation.

History: En. Sec. 5, Ch. 118, L. 1963.

Effective Date

Section 6 of Ch. 118, Laws 1963 pro-

vided the act should be in effect from and after its passage and approval. Approved March 1, 1963.

CHAPTER 4—ESTABLISHING, ALTERING AND VACATING PUBLIC HIGHWAYS

32-401 to 32-413. (1635 to 1647) Repealed.

Repeal

These sections (Secs. 2750, 2751, 2760 to 2763, 2765 to 2768, Pol. C. 1895; Secs. 55, 56, 65 to 68, 70, 72, 73, pages 35, 38, 39, L. 1901; Secs. 54, 55, 63 to 66, 68 to 71, Ch. 44, L. 1903; Secs. 1 to 16, Ch. 4, Ch. 72, L. 1913; Secs. 1 to 16, Ch. 4, Ch. 141, L. 1915; Secs. 1 to 13, Ch. 4, Ch. 172,

L. 1917; Secs. 1, 2, Ch. 4, Ex. L. 1919; Sec. 1, Ch. 107, L. 1935; Sec. 1, Ch. 123, L. 1961), relating to the establishment, alteration and discontinuance of highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-4002 to 32-4013.

32-415, 32-416. (1649, 1650) Repealed.

Repeal

These sections (Secs. 2770, 2771, Pol. C. 1895; Secs. 75, 76, p. 40, L. 1901; Secs. 73, 74, Ch. 44, L. 1903; Secs. 18, 19, Ch. 4, Ch. 72, L. 1913; Secs. 18, 19, Ch. 4, Ch. 141, L. 1915; Secs. 15, 16, Ch. 4, Ch. 172,

L. 1917), relating to the laying out and changing of highways along section or subdivision lines, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4009.

CHAPTER 5—LOCAL IMPROVEMENT DISTRICTS

32-501 to 32-507. (1676 to 1682) Repealed.**Repeal**

These sections (Secs. 1 to 7, Ch. 12, Ch. 172, L. 1917), relating to construction and improvement of highways through assess-

ment districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3101 to 32-3107 and 32-3110.

32-509 to 32-526. (1684 to 1701) Repealed.**Repeal**

These sections (Secs. 9 to 26, Ch. 12, Ch. 172, L. 1917; Sec. 1, Ch. 13, L. 1925), relating to construction and improvement of highways through local improvement

districts, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see secs. 32-3108 to 32-3131.

CHAPTER 6—SPECIAL ROAD DISTRICTS, ABOLISHMENT

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-601, 32-602. Repealed.**Repeal**

These sections (Secs. 1, 3, Ch. 35, L. 1939), abolishing special road districts,

were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 7—PUBLIC BRIDGES

32-701 to 32-711. (1703 to 1713) Repealed.**Repeal**

These sections (Secs. 2810 to 2814, Pol. C. 1895; Secs. 75 to 79, Ch. 44, L. 1903; Sec. 1, Ch. 9, L. 1909; Secs. 1 to 5, Ch. 5, Ch. 72, L. 1913; Secs. 1 to 5, Ch. 5, Ch. 141, L. 1915; Secs. 1 to 6, Ch. 63, L. 1917; Sec. 1, Ch. 144, L. 1931; Sec. 1,

Ch. 144, L. 1947; Sec. 1, Ch. 25, L. 1951; Sec. 1, Ch. 172, L. 1963), relating to the construction and maintenance of public bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2901 to 32-2907 and 32-3602 to 32-3604.

32-713 to 32-715. Repealed.**Repeal**

These sections (Secs. 1 to 3, Ch. 106, L. 1955; Secs. 1, 2, Ch. 35, L. 1957), relating to state construction and reconstruction

of bridges, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2604.

32-716. Deduction of allotment from future regular apportionments, etc.**Compiler's Notes**

Section 84-1817, referred to in this sec-

tion in the parent volume, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

CHAPTER 9—CORRUGATED IRON CULVERTS

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-901 to 32-905. (1721 to 1725) Repealed.**Repeal**

These sections (Secs. 1 to 5, Ch. 143, L. 1919), relating to corrugated iron cul-

verts used in road construction, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

CHAPTER 10—OBSTRUCTIONS AND ENCROACHMENTS

Section 32-1021. Flagmen escorts—prohibitions against nighttime herding on public highways.

32-1022. Violations.

32-1002 to 32-1017. (1727 to 1741.1) Repealed.**Repeal**

These sections (Sec. 2734, Pol. C. 1895; Secs. 50, 90, Ch. 44, L. 1903; Secs. 14 to 16, Ch. 6, Ch. 72, L. 1913; Secs. 2 to 16, Ch. 6, Ch. 141, L. 1915; Sec. 1, Ch. 74, L. 1929; Sec. 1, Ch. 237, L. 1959; Sec. 1,

Ch. 176, L. 1965), relating to encroachments and obstructions on highways, were repealed by Sec. 158, Ch. 263, Laws 1955; Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-21-111, 32-4402 to 32-4410.

32-1018. Grazing livestock on highway unlawful.**Civil Liability for Violation**

Motorist injured when car struck cattle on public highway could not prove violation of statute and obtain judgment in his favor in absence of evidence that owner

had willfully permitted livestock to be on highway and in absence of evidence that highway device had been installed to exclude livestock. *Jenkins v. Valley Garden Ranch, Inc.*, 151 M 463, 443 P 2d 753.

32-1021. Flagmen escorts—prohibitions against nighttime herding on public highways. Any person who owns, controls or is entitled to possession of any livestock shall not herd or drive a herd of livestock in excess of the number of ten (10) on any interstate or state primary highways as defined by the state highway commission in the state unless the livestock shall be preceded and followed by flagmen escorts for the purpose of warning other highway users. Livestock shall not be herded or driven on any interstate or state primary highways during nighttime as defined in section 90-406, R.C.M. 1947, except in a case of emergency. During the hours of darkness the flagmen escorts will use adequate warning lights such as, but not limited to, portable lamps, lanterns, or rotating beacons. This provision shall not apply during daytime at posted livestock crossings on highways.

History: En. Sec. 1, Ch. 90, L. 1967.

Title of Act

An act requiring flagmen escorts preceding and following livestock herded on

interstate or state primary highways and prohibiting herding livestock on said highways during nighttime; and providing exceptions.

32-1022. Violations. Any person violating the terms of this act shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 90, L. 1967.

CHAPTER 11—SPEED AND TRAFFIC REGULATIONS

- Section 32-1122. Regulation of size and weight of vehicles on public highways.
 32-1123. Standards of maximum dimensions, weights, etc.
 32-1127. Permits for excess size and weight.
 32-1131. Speed and traffic regulation—disposition of fines.

32-1113. (1748.1) Owner or operator of vehicle released, etc.**Intoxicated Driver**

Question was for jury whether passenger injured in accident had assumed risk of going into car driven by man who had had several drinks or whether driver was grossly negligent; passenger has burden of showing that driver was grossly negligent which is defined as "failure to use slight care." *Heen v. Tiddy*, 151 M 265, 442 P 2d 434.

Jury Question

The question of gross negligence was properly submitted to the jury on evidence that defendant approached a known 90-degree turn at a speed of 35 to 40 miles per hour on a rough road despite warnings from the plaintiff guest and another passenger to slow down. *Carter v. Miller*, 140 M 426, 372 P 2d 421, 425.

The question of whether the action of a second defendant is an independent inter-

vening cause in one for the jury and their finding will not be disturbed when there is substantial evidence to support it. *Holland v. Konda*, 142 M 536, 385 P 2d 272.

Pleading of Negligence

A general allegation of negligence in the complaint is sufficient to raise the issue of gross negligence. *Carter v. Miller*, 140 M 426, 372 P 2d 421, 424.

32-1115. (1748.3) Imputation of ordinary negligence to guest.

References

Holland v. Konda, 142 M 536, 385 P 2d 272.

32-1122. (1751.1) Regulation of size and weight of vehicles on public highways. It shall be unlawful and constitute a misdemeanor for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any public highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this act, or any vehicle or vehicles which are not so constructed or equipped as required in this act or the rules and regulations of the state highway commission, and the maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter said limitations or substitute any other limitations or requirements except as express authority may be granted in this act. Provided, however, that the operator of a vehicle which has been loaded at a location where no scale exists can move said vehicle over the public highways to the first open state scale without incurring the penalties provided by section 32-1125, R. C. M. 1947. The origin of movement must be at such distance from a scale that the operator could not have been reasonably expected to check the weight of said vehicle during the loading thereof and the operator must exhibit shipping papers or other written evidence of the location at which the vehicle was loaded. The vehicle must proceed toward its destination over the most direct highway route and stop at the first open state scale, permanent or portable. The load must be adjusted or reduced to conform to existing limitations upon size and weight of vehicles before said vehicle shall be moved from the point of weighing.

History: En. Sec. 1, Ch. 171, L. 1931; amd. Sec. 1, Ch. 123, L. 1947; amd. Sec. 1, Ch. 188, L. 1969.

Amendments

The 1969 amendment added the proviso.

32-1123. Standards of maximum dimensions, weights, etc. The following standards are hereby made applicable to and shall govern the maximum dimensions and weights of motor vehicles, and other characteristics and factors thereof, operating over the highways of and in the state of Montana, to the exclusion of any other standards or any other requirements respecting the subject matter:

(1) Definitions. For the purpose of this act, the following definitions shall apply:

- (a) Vehicle—as defined in section 32-2102, R.C.M. 1947.
- (b) Motor Vehicle—as defined in section 32-2102, R.C.M. 1947.
- (c) Truck-Tractor—as defined in section 32-2103, R.C.M. 1947.

- (d) Truck—as defined in section 32-2104, R.C.M. 1947.
- (e) Trailer—as defined in section 32-2105, R.C.M. 1947.
- (f) Semitrailer—as defined in section 32-2105, R.C.M. 1947.

(g) Dolly or converter gear—a device consisting of one (1) or two (2) axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, thereby converting a semitrailer into a full trailer as defined in section 32-2105, R.C.M. 1947.

(2) Width—No vehicle, unladen or with load, shall have a total outside width in excess of ninety-six (96) inches, except buses which may have a total outside width not to exceed one hundred two (102) inches, and such bus width shall be allowed only on paved highways twenty (20) feet or more in width; provided, however, that this restriction does not apply to implements of husbandry moved or propelled upon the highway during daylight hours for a distance of not more than fifty (50) miles, if the movement is incidental to the farming operations of the owner of the implement of husbandry; provided, further, that with respect to such implements of husbandry having a width in excess of twelve (12) feet, it shall be preceded and followed by flagmen escorts for the purpose of warning other highway users.

(3) Height—No vehicle, unladen or with load, shall exceed a height of thirteen (13) feet, six (6) inches.

(4) Length—(a) No single truck, unladen or with load, shall have an over-all length, inclusive of front and rear bumpers, in excess of thirty-five (35) feet.

(b) No single bus, unladen or with load, shall have an over-all length, inclusive of front and rear bumpers, in excess of forty (40) feet.

(c) No combination of truck and trailer, tractor and semitrailer, tractor-semitrailer-full trailer, or tractor-semitrailer-semitrailer converted to a full trailer by use of a dolly equipped with a fifth wheel, shall have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet, provided that when the combination consists of more than two (2) units the rear units of such combination shall be equipped with breakaway brakes.

(d) No motor vehicle shall tow more than one (1) motor vehicle and no motor vehicle shall draw more than two (2) motor vehicles attached thereto by the dual saddlemount method, that is by mounting the front wheels of one (1) vehicle on the bed of another leaving the rear wheels only of such vehicle in contact with the roadway, nor shall such combination have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(e) No passenger vehicle or truck of less than two thousand (2,000) pounds "manufacturers' rated capacity" shall tow more than one (1) trailer or semitrailer, nor shall such combination have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet.

(5) Permissible Loads—(a) No axle shall carry a load in excess of eighteen thousand (18,000) pounds. An axle load shall be defined as the total load transmitted to the road by all wheels whose centers may be in-

cluded between two (2) parallel transverse vertical planes forty (40) inches apart, extending across the full width of the vehicle.

(b) (i) The gross weight of any group of axles of any vehicle or combination of vehicles, when the distance between the first and last axles of any group of axles is eighteen (18) feet or less, and the gross weight of any vehicle when the distance between the first and last axles of all the axles of the vehicle is eighteen (18) feet or less, shall not exceed that set forth in the following table of weights:

Table of weights [Same as parent volume.]

(ii) The gross weight of any vehicle or combination of vehicles, where the distance between the first and last axles of the vehicle or combination of vehicles is more than eighteen (18) feet, shall not exceed that set forth in the following table of weights:

Table of weights [Same as parent volume.]

(c) The state highway commission may, based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation, authorize by special permit at a fee of ten dollars (\$10), specifying highway routings, the operation of vehicles having two (2) but not more than nine (9) axles for which the maximum single axle load shall be twenty thousand (20,000) pounds and all axles forty (40) inches or less apart shall be considered a single axle, and for which no two (2) consecutive axles more than forty (40) inches or less than ninety-six (96) inches apart shall carry a load in excess of thirty-four thousand (34,000) pounds. The maximum gross weight allowed on any vehicle or combination so authorized shall be determined by the formula $W \text{ equals } 500 (LN/N \text{ minus } 1 \text{ plus } 12N \text{ plus } 36)$ in which W equals gross weight, L equals wheel base in feet and N equals number of axles, provided that the maximum allowable gross weight on any group of axles shall not exceed the following values:

2 axles	40,000 pounds
3 axles	60,000 pounds
4 axles	80,000 pounds
5 axles	85,500 pounds
6 axles	90,000 pounds
7 axles	105,500 pounds
8 axles	105,500 pounds
9 axles	105,500 pounds

This subdivision shall have no application to highways which are a part of the national system of interstate and defense highways (as referred to in section 127 of title 23, United States Code) when such application would prevent this state from receiving any federal funds for highway purposes.

(d) The distance between axles shall be measured to the nearest foot. When a fractional measurement is exactly one-half ($\frac{1}{2}$) foot, the next larger whole number shall be used.

(e) The maximum axle and axle group loads stated in paragraphs (a), (b)(i) and (b)(ii) of clause (5) above are subject to reasonable re-

duction in the discretion of the state highway commission during periods when road subgrades have been weakened by water saturation or other causes.

(f). * * * [Same as parent volume.]

(g) Nothing contained in this section shall be deemed to authorize, without a permit issued as provided by law, the operation of any combination of vehicles having any gross weight, axle load or size in excess of that authorized in this section, or the operation of any combination of vehicles on the national system of interstate and defense highways having any gross weight or size in excess of that permitted by operation of law in this state prior to July 1, 1956, or by federal law or regulation in excess thereof, which may be hereafter adopted. If federal law allows establishment of size and weight limits in excess of those permitted in this section, without penalty or denial of federal funds for highway purposes, the state highway commission may, by permit designating highway routing, authorize the movement on highways under its jurisdiction of vehicles or combinations of vehicles of a size or weight in excess of the limits provided for in this section, but within the limits necessary to qualify for federal aid highway funds.

History: En. Sec. 2, Ch. 123, L. 1947; amd. Sec. 1, Ch. 73, L. 1953; amd. Sec. 1, Ch. 250, L. 1955; amd. Sec. 1, Ch. 221, L. 1959; amd. Sec. 1, Ch. 243, L. 1961; amd. Sec. 1, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment added new subdivision (1); redesignated old subdivisions (1) through (4) as new subdivisions (2) through (5); substituted new subdivision (4)(c) for old subdivision (3)(c), which read, "No combinations of (1) truck-tractor and semitrailer, (2) truck and trailer, or other combination of vehicles, shall consist of more than two units except that, at the discretion of the state highway commission, they may permit combinations of vehicles of not more than three units consisting of (3) tractor-semitrailer-semitrailer converted to full trailer by use of a dolly equipped with fifth wheel which shall be considered a part of the trailer for all purposes and not as a separate unit, or (4) tractor-semitrailer-full trailer, and no such combination of vehicles, unladen or with load, shall have an over-all length, inclusive of front and rear bumpers, in excess of sixty (60) feet, provided that when the combination consists of more than two

(2) units the rear unit of such combination shall be equipped with breakaway brakes"; redesignated the first paragraph of subdivision (5)(b) as (i); redesignated old subdivision (4)(c) as new subdivision (5)(b)(ii); added new subdivision (5)(c); in new subdivision (5)(e), substituted "(b)(i) and (b)(ii) of clause (5)" for "(b) and (c) of clause (4)" before "above are subject"; and added new subdivision (5)(g).

Mandatory Nature of Penalty

Once court determined that defendant was driving logging truck upon highways of state when gross weight exceeded maximum gross weight allowed by statute by some 28,000 pounds, court had no choice but to levy additional fine of \$1,000 under penalty section of chapter; penalty is in addition to the other penalties provided by statute, is obligatory upon judge, is not violation of double jeopardy provision of constitution and does not violate statute providing that when action is punishable under different provisions of code, punishment may be had under only one of them. State ex rel. Oleson v. District Court, Eleventh Judicial Dist., 151 M 12, 438 P 2d 560.

32-1127. (1751.6) Permits for excess size and weight. The state highway commission, and local authorities in their respective jurisdiction, may, in their discretion, upon application in writing and good cause being shown therefor, issue a special permit in writing, authorizing the applicant to operate or move a vehicle of a size or weight exceeding the maximum specified in this act upon any highway under the jurisdiction of and for

the maintenance of which the body granting the permit is responsible; provided, however, that only the state highway commission shall have the discretion to issue permits for movement of vehicles carrying built-up or reducible loads in excess of nine (9) feet in width or exceeding the length, height, or weight specified in this act said permit shall be issued in the public interest; provided, however, that any carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. No permit shall be issued for a period of time greater than the license provided in Title 53 or Title 32 R. C. M. 1947, as amended, including grace periods allowed by said sections. Vehicles licensed in other jurisdictions may, at the discretion of the Montana state highway commission, purchase permits to expire with their registration, provided that any license required by the state of Montana shall govern the issuance of a special permit. The Montana state highway commission may issue oversize permits to dealers in implements of husbandry and self-propelled machinery which may be transferred from unit to unit by the dealer for the fees set forth in paragraph (b). Such permits issued to dealers in implements of husbandry and self-propelled machinery shall expire on December 31 of each year with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery shall be a resident of the state of Montana. A post-office box number shall not be a permanent address under this section.

The applicant for any special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle or load to be operated or moved and the particular state highways over which the vehicle or load is to be moved and whether such permit is required for a single trip or for continuous operation. All fees collected under this act shall be forwarded to the state treasurer for deposit in the state highway general fund.

(a) Special Permits—Discretion of Issuer—Conditions. The state highway commission or local authority is authorized to issue or withhold such special permit at its discretion, or, if such permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicle described may be operated on the public highways indicated, or otherwise to limit or prescribe conditions of operation of such vehicle or vehicles when necessary to assure against damage to the road foundation, surfaces or structures or safety of traffic and may require such undertaking or other security as may be deemed necessary to compensate for injury to any roadway or road structure.

(b) Special Permits—Fees. The following fees, in addition to the regular license and gross vehicle weight fees, shall be paid for all movements under special permits on the public highways under the jurisdiction of the state highway commission:

Six dollars (\$6.00) for each permit issued in excess of the size and weight specified in this act; provided, however, that term or blanket permits shall not be issued for overwidth loads in excess of fifteen (15) feet, overlength loads in excess of seventy (70) feet, and overheight loads

in excess of a limit determined by the state highway commission. Loads in excess of these dimensions will be limited to trip permits.

A fee of six dollars (\$6.00) shall be paid for each overweight permit issued, provided no permit shall be issued for a period of time greater than the license provided in Title 53 or Title 32 R. C. M. 1947, as amended, including grace periods allowed by said sections. Vehicles licensed in other jurisdictions may, at the discretion of the Montana state highway commission, purchase permits to expire with their registration, provided that any license required by the state of Montana shall govern the issuance of a special permit. In addition to the permit fee, there shall be charged for single trip permits: five dollars (\$5.00) for distances to and including one hundred (100) miles; fifteen dollars (\$15.00) for distances from one hundred one (101) to one hundred ninety-nine (199) miles; and twenty-five dollars (\$25.00) for distances over two hundred (200) miles traveled, for such excess load over the gross allowable load specified in this section or the sum of the excess axle loads, whichever is greater.

(c) Special Permits—Misrepresentations and Violations—Penalty—Display of Permit. Any person who knowingly and willfully misrepresents the size or weight of any load in obtaining a special permit or does not follow the requirements and conditions of the special permit or who operates any vehicle, the gross weight of which is in excess of the maximum for which such vehicle may be eligible for license, without first obtaining a special permit, is guilty of a misdemeanor.

Every special permit issued hereunder shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any peace officer, officer of the Montana highway patrol, or employees of the state highway commission.

A peace officer, officer of the Montana highway patrol, or employees of the state highway commission who shall find any person operating a vehicle in violation of the conditions of a special permit issued hereunder may confiscate such permit and forward the same to the state highway commission which may return it to the permittee or revoke, cancel, or suspend it without refund. The state highway commission shall keep a record of all action taken upon permits so confiscated and if a permit shall be returned to the permittee, the action taken by the commission shall be endorsed thereon. Any permittee whose permit is suspended or revoked may, upon request, receive a hearing before the commission or person designated by the commission. The commission, after such hearing, may reinstate any permit or revise its previous action.

History: En. Sec. 6, Ch. 171, L. 1931; amd. Sec. 2, Ch. 147, L. 1933; amd. Sec. 5, Ch. 184, L. 1939; amd. Sec. 1, Ch. 254, L. 1955; amd. Sec. 5, Ch. 243, L. 1961; amd. Sec. 1, Ch. 225, L. 1965; amd. Sec. 1, Ch. 83, L. 1969.

Amendments

The 1965 amendment substituted "shall specifically describe the powered vehicle

or towing vehicle and generally describe the type of vehicle or load" for "shall specifically describe the vehicle or vehicles and load" after "The applicant for any special permit" at the beginning of the second paragraph; and substituted "over which the vehicle or load is to be moved" for "for which to operate is requested" after "particular state highways" in the first sentence of the second paragraph.

The 1969 amendment substituted "time greater * * * said sections" for "more than nine (9) months" in the second sentence of the first paragraph and added the remaining sentences to that paragraph and, in subsection (b), increased special permit fees from \$3.00 to \$6.00 in the second paragraph, inserted "A fee of six dollars * * * special permit" in the third paragraph, and, immediately following,

substituted "In addition to the permit fee" for "In addition to the three dollar (\$3.00) fee specified herein for overweight permits."

Effective Date

Section 2 of Ch. 225, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

32-1131. (1752) Speed and traffic regulations—disposition of fines. Any and all fines collected for the violation of any of the provisions of this act shall belong to the general road fund of the county, and shall, immediately after their collection, be paid over by the court or magistrate collecting the same to the county treasurer for the use and benefit of that fund, except for that portion of the fines, as provided for in section 4 [75-5304] of this act, which the county treasurer shall transmit to the state treasurer of Montana and by him credited to the automobile driver education account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 10, Ch. 72, L. 1913; re-en. Sec. 1, Ch. 10, Ch. 141, L. 1915; re-en. Sec. 1752, R. C. M. 1921; amd. Sec. 12, Ch. 226, L. 1965; amd. Sec. 11, Ch. 214, L. 1969.

Amendments

The 1965 amendment added the exception at the end of the section commencing with "except the penalty."

Separability Clause

Section 13 of Ch. 226, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect

in all valid applications that are severable from the invalid applications."

The 1969 amendment substituted "for that portion of the fines" for "the penalty assessments levied and paid."

Repealing Clause

Section 12 of Ch. 214, Laws 1969 read "Sections 75-5301 through 75-5309, R. C. M. 1947, are repealed."

Effective Dates

Section 14 of Ch. 226, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

Section 13 of Ch. 214, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

CHAPTER 12—UNIFORM ACCIDENT REPORTING ACT

32-1202. Accidents involving death or personal injuries.

References

Parini v. Lanch, 148 M 188, 418 P 2d 861, 864.

32-1213. Accident reports confidential.

Inadmissibility in Evidence

In negligence action by driver of automobile against city and driver of city road grader with whom he collided, accident report filed by city driver with Butte city police department was privileged, confi-

dential and inadmissible and its admission into evidence over objection of city driver was prejudicial error even though case was heard by court without jury. Morrison v. City of Butte, 150 M 106, 431 P 2d 79.

32-1215. Any incorporated city may require accident reports.**Inadmissibility in Evidence**

In negligence action by driver of automobile against city and driver of city road grader with whom he collided, accident report filed by city driver with Butte city police department was privileged, confi-

dential and inadmissible and its admission into evidence over objection of city driver was prejudicial error even though case was heard by court without jury. *Morrison v. City of Butte*, 150 M 106, 431 P 2d 79.

CHAPTER 13—GOOD ROADS DAY

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-1301. (1764) Repealed.**Repeal**

This section (Sec. 1, Ch. 20, L. 1915), relating to good roads day, was repealed

by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4401.

CHAPTER 16—STATE HIGHWAY COMMISSION AND HIGHWAY ENGINEER—POWERS AND DUTIES

Section 32-1619. Disposition of state highway moneys.

32-1627. State payment of construction and maintenance costs within municipalities—municipal share of curb and gutter costs.

32-1628. Bypassing of municipalities—consent of municipal governing body.

32-1629. Littering highway as misdemeanor—penalty.

32-1629.1. Allowing garbage, debris or refuse to be blown or removed from vehicle onto highway—penalty.

32-1630. Reward for informing on litterbugs.

32-1631. Posting notice of act.

32-1601 to 32-1618. (1783 to 1798) Repealed.**Repeal**

These sections (Secs. 1 to 16, Ch. 10, Ex. L. 1921; Sec. 1, Ch. 129, L. 1925; Secs. 1, 2, Ch. 92, L. 1939; Sec. 1, Ch. 111, L. 1941; Secs. 1 to 6, Ch. 86, L. 1945; Sec. 1, Ch. 155, L. 1945; Sec. 1, Ch. 117, L. 1953; Sec. 1, Ch. 118, L. 1953; Sec. 1, Ch. 91, L. 1955; Sec. 1, Ch. 43, L. 1957; Sec. 1, Ch. 98, L. 1959; Sec. 1, Ch. 210, L. 1959; Sec. 1, Ch. 124, L. 1961; Sec. 1, Ch. 180, L. 1961; Sec. 1, Ch. 182, L. 1961;

Sec. 1, Ch. 222, L. 1961; Sec. 1, Ch. 91, L. 1963; Secs. 1, 2, Ch. 143, L. 1963; Sec. 1, Ch. 125, L. 1965; Secs. 17, 18, Ch. 177, L. 1965), relating to the powers and the duties of the state highway commission and the highway engineer, were repealed by Sec. 158, Ch. 263, Laws 1955; Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2401 to 32-2413, 32-2418, 32-2501 to 32-2503, 32-3902 to 32-3916, 32-4016, 32-4101 to 32-4103.

32-1619. (1799) Disposition of state highway moneys. All moneys received for the use and purpose of the state highway commission from the receipt or transfer of motor vehicle license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the state highway commission. Any reference to the state highway fund in this code shall be taken to mean the state highway account in the earmarked revenue fund. All moneys received from the counties, and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the state highway commission. Hereafter all moneys collected for the state highway commission as authorized by law shall be credited to such fund or funds by the state treasurer.

History: En. Sec. 17, Ch. 10, Ex. L. 1921; re-en. Sec. 1799, R. C. M. 1921; amd. Sec. 212, Ch. 147, L. 1963.

Amendment

The 1963 amendment substantially rewrote this section. For previous text, see parent volume.

32-1620. (1800) Repealed.**Repeal**

This section (Sec. 18, Ch. 10, Ex. L. 1921; Sec. 7, Ch. 86, L. 1945; Sec. 18, Ch. 97, L. 1961), relating to claims against

the state highway commission, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-2417.

32-1622 to 32-1626. Repealed.**Repeal**

These sections (Sec. 1, Ch. 15, L. 1955; Secs. 1, 2, Ch. 30, L. 1955; Sec. 1, Ch. 254, L. 1957; Sec. 1, Ch. 204, L. 1961; Sec. 1, Ch. 219, L. 1963), relating to state

and federal aid highways were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2302, 32-2411 and 32-2414 to 32-2416.

32-1627. State payment of construction and maintenance costs within municipalities—municipal share of curb and gutter costs. (1) Except as provided in subsection (2) of this section, the state highway commission shall pay the entire costs of construction and maintenance of streets and highways which:

- (a) Are state highway routes; and
- (b) Are within municipalities incorporated prior to January 1, 1965.

(2) An incorporated municipality shall pay one-half ($\frac{1}{2}$) of the state's share of the cost of curbs and gutters along such streets and highways.

History: En. Sec. 1, Ch. 210, L. 1965.

Title of Act

An act relating to construction and

maintenance of certain streets and highways in or near incorporated municipalities.

32-1628. Bypassing of municipalities—consent of municipal governing body. (1) The highway commission shall not construct highway bypasses or highway relocation projects without prior consent of the governing body of an incorporated municipality when the bypasses or projects:

(a) Are not part of the national system of interstate highways built under the national defense highway act; and

(b) Divert motor vehicles from an existing highway route through a municipality incorporated prior to January 1, 1965.

(2) The highway commission shall notify the governing body of such municipality by certified mail that they propose to bypass the municipality. No contract shall be let nor work commenced until the governing body notifies the commission of its consent, or until the elapse of sixty (60) days after the notice has been sent by the highway commission to such municipality, whichever first occurs. The failure of such municipality to act and notify the highway commission of its action within such sixty (60) day period shall constitute implied consent to the bypass.

(3) Actual consent or refusal to bypass shall be in the form of a resolution, duly adopted by a majority of the members of the governing body of the municipality.

(4) The governing body may not withdraw consent once the highway commission has been notified of such consent.

(5) Nothing contained in this act shall in any way modify the provisions of section 32-1625, R. C. M. 1947.

History: En. Sec. 2, Ch. 210, L. 1965.

Compiler's Notes

Section 32-1625, referred to in subsection (5) of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

Effective Date

Section 3 of Ch. 210, Laws, 1965 provided the act should be in effect from and after its passage and approval. Approved March 6, 1965.

Retrospective Application

Statute would not be enforced in favor of nonconsenting municipality where state highway commission had acquired rights and obligations and begun construction of the bypass before its enactment and enactment did not disclose legislative intent to apply retroactively. *City of Harlem v. State Highway Commission*, 149 M 281, 425 P 2d 718.

32-1629. Littering highway as misdemeanor—penalty. Any person who throws, dumps, deposits or causes to be deposited, any garbage, refuse, waste or litter on the right of way of any state highway or interstate highway, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of two hundred fifty dollars (\$250) or by imprisonment in the county jail for a period not exceeding thirty (30) days, or both such fine and imprisonment in the discretion of the court.

History: En. Sec. 1, Ch. 128, L. 1965; amd. Sec. 1, Ch. 309, L. 1967.

Title of Act

An act making it unlawful to throw, dump, deposit or cause to be deposited, any garbage, refuse, waste or litter on the

right of way of any state, interstate, or secondary highway; providing for a penalty, reward and a repealing clause.

Amendments

The 1967 amendment made no change in this section.

32-1629.1. Allowing garbage, debris or refuse to be blown or removed from vehicle onto highway—penalty. It is unlawful for any person or persons transporting garbage, debris or refuse upon any public highway or road of this state to negligently or carelessly allow the same to be blown or otherwise removed from the vehicle in which such garbage, debris or refuse is being transported. Any person found guilty of a violation of this section shall be fined in a sum not exceeding one hundred dollars (\$100), or imprisoned in the county jail for a period not exceeding thirty (30) days, or be punished by both the fine and imprisonment, in the discretion of the court.

History: En. Sec. 2, Ch. 309, L. 1967.

Title of Act

An act amending section 32-1629, R. C. M. 1947, as amended, making the transportation of garbage, refuse and

debris unlawful unless the vehicle in which same is transported is protected to prevent the garbage, debris or refuse from being blown or removed from the vehicle while in transit and providing a penalty.

32-1630. Reward for informing on litterbugs. Upon a conviction under the provisions of this act, any person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person shall be paid a reward from the state general fund in the sum of one hundred dollars (\$100).

History: En. Sec. 2, Ch. 128, L. 1965.

32-1631. Posting notice of act. It is the duty of the state highway commission to post notices of this act, and the penalties provided for, on

the state and interstate highways at locations to be designated by the state highway commission.

History: En. Sec. 3, Ch. 128, L. 1965. Repealed all acts and parts of acts in conflict therewith.

Repealing Clause

Section 4 of Ch. 128, Laws 1965 re-

CHAPTER 18—STOCK LANE LAW

(Repealed—Section 12-109, Chapter 197, Laws of 1965, effective December 31, 1966)

32-1801 to 32-1804. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 63, L. 1939), the Stock Lane Law, were repealed

by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966. For new law, see sec. 32-4015.

CHAPTER 19—MONTANA TOLL BRIDGE AUTHORITY

(Repealed—Section 12-109, Chapter 197, Laws of 1965)

32-1901 to 32-1915. Repealed.

Repeal

These sections (Secs. 1 to 15, Ch. 31, L. 1953; Sec. 11-117, Ch. 264, L. 1963), relating to toll bridges, were repealed by

Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-2701 to 32-2716, 32-3501 to 32-3509, and 32-3919.

CHAPTER 20—CONTROLLED ACCESS HIGHWAYS

(Repealed—Section 12-109, Chapter 197, Laws of 1965)

32-2001 to 32-2010. Repealed.

Repeal

These sections (Secs. 1 to 10, Ch. 104, L. 1955; Secs. 1 to 3, Ch. 121, L. 1957; Sec. 1, Ch. 134, L. 1959; Secs. 1 to 9, Ch. 156, L. 1963; Sec. 2, Ch. 90, L. 1965), relating to controlled access highways, were

repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-3920, 32-4018, and 32-4301 to 32-4311. Sec. 1, Ch. 90, L. 1965 which was inadvertently classified as section 32-2008.1 has been transferred to section 32-4308.1.

CHAPTER 21—UNIFORM ACT REGULATING TRAFFIC ON HIGHWAYS

Section 32-2134.1.	Injury to or removal of sign or marker as misdemeanor—penalty.
32-2134.2.	Reward for information on injury to or removal of sign or marker.
32-2134.3.	Posting of act along highways.
32-2137.	Traffic-control signal legend.
32-2143.1.	Permission of authorities to hold speed contest.
32-2143.2.	Penalty for unauthorized drag racing.
32-2144.	Speed restrictions—basic rule.
32-2170.	Vehicle approaching or entering intersection.
32-2173.	Vehicle entering highway from private road, driveway or public approach ramp.
32-2174.	Vehicles approaching "Yield" sign.
32-2177.	Pedestrians' right of way in crosswalk.
32-2197.	Overtaking and passing school bus.
32-2198.	Special lighting equipment on school buses.
32-21-105.	Riding on motorcycles.
32-21-130.	Lamps on other vehicles and equipment—emblem to be used on certain slow-moving vehicles—slow-moving vehicles to permit overtaking vehicles to pass.

- 32-21-132. Audible and visual signals on vehicles.
- 32-21-143.1. Brake equipment required.
- 32-21-143.2. Performance ability of brakes.
- 32-21-143.3. Maintenance of brakes.
- 32-21-143.4. Hydraulic brake fluid.
- 32-21-149. Restrictions as to tire equipment.
- 32-21-149.1. Fenders, splash aprons or flaps required on certain vehicles—dimension and location—violation a misdemeanor—penalty.
- 32-21-150.1. Seat belts required in new vehicles.
- 32-21-150.2. Specifications for seat belts.
- 32-21-150.3. Penalty for seat belt violations.
- 32-21-155.1. Annual inspection of school buses.
- 32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when.
- 32-21-164. Summons—issuing to child under eighteen.
- 32-21-166. Vehicle equipment safety compact—text.
- 32-21-167. Legislative findings on equipment safety.
- 32-21-168. Equipment requirements continued in force.
- 32-21-169. State commissioner on vehicle equipment safety commission.
- 32-21-170. Retirement of equipment safety commission employees.
- 32-21-171. Governmental agencies to co-operate with equipment safety commission.
- 32-21-172. Documents filed and notices given by equipment safety commission.
- 32-21-173. Equipment safety commission budgets.
- 32-21-174. Equipment safety commission accounts.
- 32-21-175. Governor as executive head for compact purposes.

32-2114. Street or highway—private road or driveway—roadway, etc.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2115. Intersection.

Nature of Roads Forming Intersection

An intersection is formed when two publicly maintained ways join at any angle. Rader v. Nicholls, 140 M 459, 373 P 2d 312, 313.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2133. State highway commission to adopt sign manual.

Lack of Uniformity

Where plaintiff attempted to pass defendant's truck 250 feet from unmarked intersection, and was struck by defendant's truck as it started to make a left-hand turn, in reconciling this section with section 32-2156, which prohibits driving to the left of the center line 100 feet from intersection, it was not error on the judge's part to refuse to instruct jury on the latter section. Graveley v. Springer, 145 M 486, 402 P 2d 41.

ing road in snowstorm, it was error to admit into evidence Manual on Uniform Traffic Control Devices adopted by highway commission where manual required that appropriate signs be erected warning public of road work but did not specifically designate who was to erect them. Williams v. Maley, 150 M 261, 434 P 2d 398.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

Manual as Evidence

In action for wrongful death of driver of state highway truck killed while sand-

32-2134. State highway commission to sign all state highways.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2134.1. Injury to or removal of sign or marker as misdemeanor—penalty. Every person who maliciously injures, defaces, damages or removes any sign, signal or marker, either temporarily or permanently erected on the right of way of any secondary, state or interstate highway for warning, instruction or information of the public, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of two hundred fifty dollars (\$250) or by imprisonment in the county jail for a period not exceeding sixty (60) days, or both such fine and imprisonment in the discretion of the court. This act applies to secondary, state or interstate highways which are completed and to secondary, state or interstate highways which are under construction or repair.

History: En. Sec. 1, Ch. 184, L. 1965.

Title of Act

An act making it unlawful to damage, deface or remove any sign, signal or

marker erected on the right of way of any secondary, state or interstate highway; requiring the state highway commission to post notices hereof; providing for a penalty, reward and a repealing clause.

32-2134.2. Reward for information on injury to or removal of sign or marker. Upon conviction under the provisions of this act, any person who furnishes information to law enforcement officers leading to the arrest and conviction of the accused person shall be paid a reward from the state highway account in the earmarked revenue fund in the sum of one hundred dollars (\$100).

History: En. Sec. 2, Ch. 184, L. 1965.

32-2134.3. Posting of act along highways. It is the duty of the state highway commission to post notices of this act, and the penalties provided for, at locations to be designated by the state highway commission.

History: En. Sec. 3, Ch. 184, L. 1965.

all acts and parts of acts in conflict therewith.

Repealing Clause

Section 4 of Ch. 184, Laws 1965 repealed

32-2136. Obedience to and required traffic-control devices.

References

Faucette v. Christensen, 145 M 28, 400 P 2d 883.

32-2137. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go," "Caution," or "Stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) to (d). * * * [Same as parent volume.]

(e) Red with Traffic Sign Legend—Right Turn on Red After Stop:

1. Vehicular traffic facing such signal and legend shall stop and then may cautiously enter the intersection only to make the turn indicated by the legend but shall yield the right of way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

2. No pedestrian facing such signal and legend shall enter the roadway until the green or "Go" is shown alone.

(f) Traffic Control Signal at Place Other Than Intersection:

1. In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their very nature can have no application.

2. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

History: En. Sec. 34, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 211, L. 1963.

Amendment

The 1963 amendment inserted a new subsection (e) and redesignated former subsection (e) as (f).

32-2142. Persons under the influence of intoxicating liquor or of drugs.**Improperly Conducted Test**

Although it was improper to admit results of blood test showing that deceased's blood contained 0.15% alcohol by weight where testimony disclosed that tube used to collect blood sample had previously contained formalin and formaldehyde which could have resulted in higher than actual alcohol content result, error was not reversible in view of other testimony concerning deceased's state of intoxica-

tion. *Benner v. B. F. Goodrich Co.*, 150 M 97, 430 P 2d 648.

Jurisdiction of Justice of Peace

Since the driving of a vehicle on a highway while under the influence of intoxicating liquor is a misdemeanor under this section, it falls within the jurisdiction of a justice of the peace under section 93-410. *Wilson v. Brodie*, 148 M 235, 419 P 2d 306, 308.

32-2143.1. Permission of authorities to hold speed contest. No race or contest for speed shall be held and no person shall engage in or aid or abet in any motor vehicle speed contest or exhibition of speed on a public highway or street without written permission of the authorities of the state, county or city having jurisdiction and unless the same is fully and efficiently patrolled for the entire distance over which such race or contest for speed is to be held.

History: En. Sec. 1, Ch. 100, L. 1967.

Title of Act

An act prohibiting speed contests and "drag racing" on the public highways or

streets unless written permission is granted by the authorities having jurisdiction over such highways or streets; fixing penalty for violation of act.

32-2143.2. Penalty for unauthorized drag racing. Any person convicted for violation of this act shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50) or more than five hundred dollars (\$500) or by imprisonment in the county or city jail for not more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 100, L. 1967.

32-2144. Speed restrictions—basic rule. (a). * * * [Same as parent volume.]

(b) Where no special hazard exists that requires lower speed for compliance with paragraph (a) of this section the speed of any vehicle not in excess of the limits specified in this section or established as hereinafter authorized, shall be lawful, but any speed in excess of the limits specified in this section or established as hereinafter authorized shall be unlawful:

1. Twenty-five (25) miles per hour in any urban district;
2. Thirty-five (35) miles per hour on any highways under construction or repairs;
3. Fifty-five (55) miles per hour in such other locations during the nighttime; except that the nighttime speed limit on those completed sections of interstate highways shall be sixty-five (65) miles per hour, however, the Montana highway commission shall have the authority to establish reduced night speed limits on curves and other dangerous locations as set forth in section 32-2145, R.C.M. 1947.

Daytime means from a half ($\frac{1}{2}$) hour before sunrise to a half ($\frac{1}{2}$) hour after sunset. Nighttime means at any other hour.

The speed limits set forth in this section may be altered as authorized in sections 32-2145 and 32-2146.

(c). * * * [Same as parent volume.]

History: En. Sec. 41, Ch. 263, L. 1955; amd. Sec. 1, Ch. 190, L. 1967.

tion concerning interstate highways at the end of the first paragraph of subdivision 3 of subsection (b).

Amendments

The 1967 amendment added the excep-

32-2147. Minimum speed regulations.

Instructions

Where plaintiff's son was killed when car in which he was riding struck rear of defendant's truck which had just turned onto highway, it was reversible error for court to instruct jury on slow speed statute (this section) without requiring that plaintiff show truck had been on road sufficient time to attain a normal

speed. *Hageman v. Townsend*, 144 M 510, 398 P 2d 612.

Purpose

The purpose of this section is rooted in the recognition that the slow driver may be the cause of fatal highway accidents as well as the fast driver. *Hageman v. Townsend*, 144 M 510, 398 P 2d 612.

32-2151. Drive on right side of roadway—exceptions.

Backing over Center-line

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into decedent's traffic lane, defendant's driver was negligent as a matter of law. *Hurly*

v. Star Transfer Co., 141 M 176, 376 P 2d 504, 507.

References

Williams v. Wallace, 143 M 11, 386 P 2d 744.

32-2152. Passing vehicles proceeding in opposite directions.

References

Cited in *Hurly v. Star Transfer Co.*,

141 M 176, 376 P 2d 504, 507; *Williams v. Wallace*, 143 M 11, 386 P 2d 744.

32-2156. Further limitations on driving to left of center, etc.

Contributory Negligence

Plaintiff driving to the left side of the roadway while within one hundred feet of or traversing an intersection in attempting to pass truck was guilty of contributory negligence in collision with truck attempting to make a left turn. *Rader v. Nicholls*, 140 M 459, 373 P 2d 312, 313.

Where plaintiff attempted to pass de-

fendant's truck 250 feet from unmarked intersection, and was struck by defendant's truck as it started to make a left-hand turn, in reconciling this section with section 32-2133, which provides for a uniform system of traffic control devices, it was not error on the judge's part to refuse to instruct the jury on the provisions of this section. *Graveley v. Springer*, 145 M 486, 402 P 2d 41.

Intersection

An intersection is formed when two publicly maintained ways join at any angle. *Rader v. Nicholls*, 140 M 459, 373 P 2d 312, 313.

Reliance on Markings

Defendant, who attempted to pass

plaintiff's truck within one hundred feet of intersection, in violation of this section, was not negligent per se, since defendant was entitled to rely on the broken white center line, which indicated that passing could be done lawfully at the point where the accident occurred. *Faucette v. Christensen*, 145 M 28, 400 P 2d 883.

32-2157. No-passing zones.**Duty of Other Driver**

This section does not absolve a driver intending to turn left from the obligation under section 32-2167 of making certain that the turn can be made with reasonable

safety so that plaintiff was contributorily negligent in failing to look to the rear before turning even though defendant was passing him in a no-passing zone. *Bellon v. Heinzig*, 347 F 2d 4.

32-2159. Driving on roadways laned for traffic.**Backing over Center-line**

Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway center-line into

decendent's traffic lane, defendant's driver was negligent as a matter of law. *Hurly v. Star Transfer Co.*, 141 M 176, 376 P 2d 504, 507.

32-2167. Turning movements and required signals.**Duty To Look to Rear**

Since there is no exception to this section for unlawful passing, plaintiff had the affirmative duty to look to the rear, as well as forward, and was contributorily negligent in not looking to the rear before making a left-hand turn, since he could not rely on the presumption that he would not be passed in a no-passing zone. *Bellon v. Heinzig*, 347 F 2d 4.

Knowledge of Safety Not Required

This section requires that a person making a turning movement take reasonable precautions under the circumstances, but it does not require that such person know with absolute certainty that the turning movement can be made with safety. *Holland v. Konda*, 142 M 536, 385 P 2d 272.

32-2170. Vehicle approaching or entering intersection. (a) When two (2) vehicles enter or approach an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right of way to the vehicle on the right.

(b) The right of way rule declared in paragraph (a) is modified at through highways and otherwise as hereinafter stated in this article.

History: En. Sec. 67, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1965.

ginning of present paragraph (a); and deleted from present paragraph (b) a reference to former paragraph (a).

Amendment

The 1965 amendment deleted a former paragraph (a), for text of which see parent volume; appropriately redesignated the remaining paragraphs; inserted "or approach" after "enter" near the be-

Repealing Clause

Section 2 of Ch. 175, Laws 1965 repealed all acts and parts of acts in conflict therewith.

32-2171. Vehicle turning left at intersection.**Additional Duties**

This section does not purport to catalogue all the rights and duties of a driver intending to turn left and does not negative the existence of an additional duty to maintain a proper lookout for vehicles approaching from the rear, even where

plaintiff was making a left turn in a no-passing zone. *Bellon v. Heinzig*, 347 F 2d 4.

References

United States v. Clark, 247 F Supp 958.

32-2173. Vehicle entering highway from private road, driveway or public approach ramp. The driver of a vehicle about to enter or cross a highway from a private road, driveway or public approach ramp shall yield the right of way to all vehicles approaching on said highway.

History: En. Sec. 70, Ch. 263, L. 1955; **Amendment**
amd. Sec. 1, Ch. 52, L. 1965.

The 1965 amendment inserted "or public approach ramp."

32-2174. Vehicles approaching "Yield" sign. When the intersection is designated by the commission, or the local authority having jurisdiction, as a "Yield" intersection, the driver of a vehicle approaching the "Yield" sign shall slow to a speed of not more than fifteen (15) miles per hour and yield right of way to all vehicles approaching from the right or left on the intersecting roads, or streets, which are so close as to constitute an immediate hazard. If a driver is involved in a collision at an intersection or interferes with the movement of other vehicles after driving past a "Yield" sign, such collision or interference shall be deemed evidence of the driver's failure to yield right of way.

History: En. Sec. 71, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 96, L. 1963.

Effective Date

Section 2 of Ch. 96, Laws 1963 provided the act should be in effect after its passage and approval. Approved February 28, 1963.

Amendment

The 1963 amendment deleted "Right of Way" following "Yield" within the quotation marks in three places.

32-2177. Pedestrians' right of way in crosswalk. (a) and (b). * * *
[Same as parent volume.]

(c) It is unlawful for any person to drive a motor vehicle through a column of school children crossing a street or highway or past a member of the school safety patrol while the member of the school safety patrol is directing the movement of children across a street or highway and while the school safety patrol member is holding his official signal in the stop position.

History: En. Sec. 74, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 54, L. 1965.

all acts and parts of acts in conflict therewith.

Amendment

The 1965 amendment added subsection (c).

Effective Date

Section 3 of Ch. 54, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

Repealing Clause

Section 2 of Ch. 54, Laws 1965 repealed

32-2191. Obedience to signal indicating approach of train.

Jury Instructions

Failure of trial court to instruct jury that decedent had been contributorily negligent if he failed to stop, look and listen when either tracks or highway

signs indicated the presence of a railway crossing was reversible error. O'Brien v. Great Northern Ry. Co., 145 M 13, 400 P 2d 634.

32-2197. Overtaking and passing school bus. (a) The driver of a vehicle upon a highway outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus which

has stopped or is preparing to stop on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said bus a visual signal as specified in section 32-21-132 and said driver shall not proceed until such school bus resumes motion, or is signaled by the school bus driver to proceed as the visual signals are no longer actuated.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than eight (8) inches in height, and in addition shall be equipped with visual signals meeting the requirements of section 32-21-132. Amber flashing lights shall be actuated by the driver approximately one hundred and fifty (150) feet in cities, and approximately five hundred (500) feet in other areas before the bus is stopped to receive or discharge school children. Red lights shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children.

(c) and (d). * * * [Same as parent volume.]

History: En. Sec. 94, Ch. 263, L. 1955; amd. Sec. 1, Ch. 100, L. 1961; amd. Sec. 2, Ch. 250, L. 1965.

Amendment

The 1965 amendment inserted "or is preparing to stop" after "which has

stopped" in subsection (a); divided subsection (b) into the present first and third sentences of subsection (b); inserted the second sentence in subsection (b); and substituted "Red lights" for "which" at the beginning of the third sentence of subsection (b).

32-2198. Special lighting equipment on school buses. It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is preparing to stop or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

History: En. Sec. 95, Ch. 263, L. 1955; amd. Sec. 3, Ch. 250, L. 1965.

Amendment

The 1965 amendment inserted "is preparing to stop or" before "is stopped."

32-21-101. Stopping, standing, or parking prohibited in specified places.

Negligence as Matter of Law

Crane driver whose crane was blocking bridge was not negligent as matter of law even though he parked crane on bridge in violation of statute proscribing drivers from parking vehicles upon bridge

where suit was between driver of automobile which stopped to avoid crane and driver of second automobile which rear-ended first. *Jimison v. United States*, 267 F Supp 674.

32-21-105. Riding on motorcycles. (1) A person operating a motorcycle on public streets or highways shall ride only upon the permanent and regular seat attached thereto, and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one (1) person, in which event a passenger may ride upon the permanent and regular seat if designed for two (2) persons, or upon another seat firmly attached to the rear or side of the operator.

(2) No passenger shall be carried in a position that will interfere with the operation of the motorcycle or the view of the operator.

(3) No person operating a motorcycle shall carry any packages, bundles, or articles which would interfere with the operation of said vehicle in a safe and prudent manner.

(4) "Side saddle" riding on a motorcycle is prohibited.

(5) Motorcycles are to be operated with lights on at all times when operated on any public highway or street.

(6) Not more than two (2) motorcycles shall be operated side by side in a single traffic lane.

(7) All motor vehicles including motorcycles, are entitled to the full use of a traffic lane, and no vehicle shall be driven or operated in such a manner so as to deprive any other vehicle of the full use of a traffic lane, except that motorcycles may, with the consent of both drivers, be operated not more than two (2) abreast in a single traffic lane.

(8) Every person riding a motorcycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a motor vehicle except as to those provisions which, by their nature, can have no application.

History: En. Sec. 102, Ch. 263, L. 1955; amd. Sec. 1, Ch. 175, L. 1967.

first paragraph as subsection (1); inserted "on public streets or highways" after "motorcycle" in that subsection; and added subsections (2) through (8).

Amendments

The 1967 amendment numbered the

32-21-118. Tail lamps.

County Road Grader

Statute requiring that tail lamps be not more than 72 inches from ground did not apply to county road grader on which two red tail lamps had been mounted ten feet from ground; motorist suing county for

injury sustained when auto struck road grader from rear was not entitled to instruction that statute had been violated and that county was therefore negligent as matter of law. *Bernhard v. Lincoln County*, 150 M 557, 437 P 2d 377.

32-21-130. Lamps on other vehicles and equipment—emblem to be used on certain slow-moving vehicles—slow-moving vehicles to permit overtaking vehicles to pass. (a) Every vehicle, including animal-drawn vehicles and vehicles referred to in section 32-21-114 (c), not specifically required by the provisions of sections 32-21-114 to 32-21-153 to be equipped with lamps or other lighting devices, shall at all times specified in section 32-21-115 be equipped with at least one (1) lamp displaying a white light visible from a distance of not less than five hundred (500) feet to the front of said vehicle, and shall also be equipped with two (2) lamps displaying red light visible from a distance of not less than five hundred (500) feet to the rear of said vehicle, or as an alternative, one (1) lamp displaying a red light visible from a distance of not less than five hundred (500) feet to the rear and two (2) red reflectors visible for distances of one hundred (100) to six hundred (600) feet to the rear when illuminated by the upper beams of head lamps.

(b) It shall be unlawful, after January 1, 1970, for any person to operate on the roadway of any state highway, farm, rural or county roads

and city streets of this state any slow-moving vehicle or equipment, any animal-drawn vehicle, or any other machinery designed for use at speeds less than twenty-five (25) miles per hour, including all road construction or maintenance machinery, except when engaged in actual construction or maintenance work either guarded by a flagman or clearly visible warning signs, which normally travels or is normally used at a speed of less than twenty-five (25) miles per hour unless there is displayed on the rear thereof an emblem as described in and displayed as provided in subsection (c) of this section. The requirement of such emblem shall be in addition to any lighting devices required by law.

(c) The emblem required by subsection (b) of this section shall be of substantial construction, and shall be a based-down equilateral triangle of fluorescent yellow-orange film or equivalent quality paint with a base of fourteen (14) inches and an altitude of twelve (12) inches. Such triangle shall be bordered with reflective red strips having a minimum width of one and three-fourths ($1\frac{3}{4}$) inches, with the vertices of the overall triangle truncated such that the remaining altitude shall be a minimum of fourteen (14) inches. Such emblem shall be mounted on the rear of such vehicle near the horizontal geometric center of the vehicle at a height of three (3) to five (5) feet above the roadway, and shall be maintained in a clean, reflective condition.

(d) Any person violating the provisions of this section shall be subject to penalty as provided for in section 32-21-157.

(e) In addition to the foregoing requirements, on a highway that has only two lanes for traffic moving in opposite directions, when an overtaking vehicle being operated in conformity with section 32-2144, R. C. M. 1947, does not have a clear lane for passing as required by section 32-2155 and section 32-2156, R. C. M. 1947, the driver of a slower-moving, overtaken vehicle shall, at the first opportunity, whenever sufficient area for a safe turnout exists, move the overtaken vehicle off the main-traveled portion of the highway until the overtaking vehicle is safely clear of the overtaken vehicle.

History: En. Sec. 127, Ch. 263, L. 1955;
amd. Sec. 1, Ch. 247, L. 1969.

Amendments

The 1969 amendment added subsections (b) through (e); and designated the first paragraph as subsection (a).

32-21-132. Audible and visual signals on vehicles. (a) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with a siren, exhaust whistle or bell capable of giving an audible signal.

(b) Every authorized emergency vehicle shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, which shall be capable of displaying to the front two (2) alternately flashing red lights located at the same level and to the rear two (2) alternately flashing red lights located at the same level, and these lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight.

(c) Every bus used for the transportation of school children shall, in addition to any other equipment and distinctive markings required by this act, be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two (2) red and two (2) amber alternating flashing lights and to the rear two (2) red and two (2) amber alternating flashing lights. These lights shall have sufficient intensity to be visible at five hundred (500) feet in normal sunlight. The warning lights shall be of a type, and located on each bus, as prescribed by the state board of education and approved by the supervisor of the highway patrol.

(d) A police vehicle when used as an authorized emergency vehicle may but need not be equipped with alternately flashing red lights specified herein. The use of the signal equipment described herein shall impose upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in sections 32-2175 and 32-2197.

History: En. Sec. 129, Ch. 263, L. 1955; amd. Sec. 1, Ch. 40, L. 1959; amd. Sec. 1, Ch. 250, L. 1965.

Amendment

The 1965 amendment deleted "Every bus used for the transportation of school children and" at the beginning of subsection (b); inserted a new subsection (c); and redesignated former subsection (c) as (d).

32-21-143. Repealed.

Repeal

This section (Sec. 140, Ch. 263, L. 1955; Sec. 1, Ch. 81, L. 1957) relating to brakes

required on vehicles, was repealed by Sec. 5, Ch. 139, Laws 1965.

32-21-143.1. Brake equipment required. Every motor vehicle, trailer, semitrailer and pole trailer, and any combination of such vehicles operating upon a highway within this state shall be equipped with brakes in compliance with the requirements of this chapter.

(a) Service brakes—adequacy. Every such vehicle and combination of vehicles, except special mobile equipment as defined in sections 32-2102 (h) and 53-639, R. C. M., 1947, shall be equipped with service brakes complying with the performance requirements of section 2 [32-21-143.2] of this act and adequate to control the movement of and to stop and hold such vehicle under all conditions of loading, and on any grade incident to its operation.

(b) Parking brakes—adequacy. Every such vehicle and combination of vehicles, except motorcycles and motor-driven cycles, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading, on a surface free from snow, ice or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied they shall remain applied with

the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that failure of any one part shall not leave the vehicle without operative brakes.

(c) Brakes on all wheels. Every vehicle shall be equipped with brakes acting on all wheels except:

1. Trailers, semitrailers, pole trailers of a gross weight not exceeding three thousand (3,000) pounds, provided that:

a. The total weight on and including the wheels of the trailer or trailers shall not exceed forty per cent (40%) of the gross weight of the towing vehicle when connected to the trailer or trailers, and

b. The combination of vehicles, consisting of the towing vehicle and its total towed load, is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

2. Any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

3. Trucks and truck-tractors having three (3) or more axles need not have brakes on the front wheels, except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes. However, such trucks and truck-tractors must be capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

4. Special mobile equipment as defined in section 32-2102 (h) and 53-639, R. C. M., 1947.

5. The wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, or the front wheel of a motor-driven cycle need not be equipped with brakes, provided that such motorcycle or motor-driven cycle is capable of complying with the performance requirements of section 2 [32-21-143.2] of this act.

(d) Automatic trailer brake application upon breakaway. Every trailer, semitrailer and pole trailer equipped with air or vacuum actuated brakes and every trailer, semitrailer and pole trailer with a gross weight in excess of three thousand (3,000) pounds, manufactured or assembled after January 1, 1966, shall be equipped with brakes acting on all wheels and of such character as to be applied automatically and promptly, and remain applied for at least fifteen (15) minutes, upon breakaway from the towing vehicle.

(e) Tractor brakes protected. Every motor vehicle manufactured or assembled after January 1, 1966, and used to tow a trailer, semitrailer or pole trailer equipped with brakes, shall be equipped with means for pro-

viding that in case of breakaway of the towed vehicle, the towing vehicle will be capable of being stopped by the use of its service brakes.

(f) Trailer air reservoirs safeguarded. Air brake systems installed on trailers manufactured or assembled after January 1, 1966, shall be so designed that the supply reservoir used to provide air for the brakes shall be safeguarded against backflow of air from the reservoir through the supply line.

(g) Two means of emergency brake operation. 1. Air brakes. After January 1, 1966, every towing vehicle, when used to tow another vehicle equipped with air controlled brakes, in other than driveaway or towaway operations, shall be equipped with two (2) means for emergency application of the trailer brakes. One of these means shall apply the brakes automatically in the event of a reduction of the towing vehicle air supply to a fixed pressure which shall be not lower than twenty (20) pounds per square inch nor higher than forty-five (45) pounds per square inch. The other means shall be a manually controlled device for applying and releasing the brakes, readily operable by a person seated in the driving seat, and its emergency position or method of operation shall be clearly indicated. In no instance may the manual means be so arranged as to permit its use to prevent operation of the automatic means. The automatic and the manual means required by this section may be, but are not required to be, separate.

2. Vacuum brakes. After January 1, 1966, every towing vehicle used to tow other vehicles equipped with vacuum brakes, in operations other than driveaway or towaway operations, shall have, in addition to the single control device required by subsection (h), a second control device which can be used to operate the brakes on towed vehicles in emergencies. The second control shall be independent of brake air, hydraulic, and other pressure, and independent of other controls, unless the braking system be so arranged that failure of the pressure upon which the second control depends will cause the towed vehicle brakes to be applied automatically. The second control is not required to provide modulated braking.

(h) Single control to operate all brakes. After January 1, 1966, every motor vehicle, trailer, semitrailer and pole trailer, and every combination of such vehicles, except motorcycles and motor-driven cycles, equipped with brakes shall have the braking system so arranged that one control device can be used to operate all service brakes. This requirement does not prohibit vehicles from being equipped with an additional control device to be used to operate brakes on the towed vehicles. This regulation does not apply to driveaway or towaway operations unless the brakes on the individual vehicles are designed to be operated by a single control on the towing vehicle.

(i) Reservoir capacity and check valve. 1. Air brakes. Every bus, truck or truck-tractor with air operated brakes shall be equipped with at least one reservoir sufficient to insure that, when fully charged to the maximum pressure as regulated by the air compressor governor cut-out setting, a full service brake application may be made without lowering such reservoir pressure by more than twenty per cent (20 %). Each

reservoir shall be provided with means for readily draining accumulated oil or water.

2. Vacuum brakes. After January 1, 1966, every truck with three (3) or more axles equipped with vacuum assistor type brakes and every truck-tractor and truck used for towing a vehicle equipped with vacuum brakes shall be equipped with a reserve capacity or a vacuum reservoir sufficient to insure that, with the reserve capacity or reservoir fully charged and with the engine stopped, a full service brake application may be made without depleting the vacuum supply by more than forty per cent (40%).

3. Reservoir safeguarded. All motor vehicles, trailers, semitrailers and pole trailers, when equipped with air or vacuum reservoirs or reserve capacity as required by this section, shall have such reservoirs or reserve capacity so safeguarded by a check valve or equivalent device that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored air or vacuum shall not be depleted by the leak or failure.

(j) Warning devices. 1. Air brakes. Every bus, truck or truck-tractor using compressed air for the operation of its own brakes or the brakes on any towed vehicle, shall be provided with a warning signal, other than a pressure gauge, readily audible or visible to the driver, which will operate at any time the air reservoir pressure of the vehicle is below fifty per cent (50%) of the air compressor governor cut-out pressure. In addition, each such vehicle shall be equipped with a pressure gauge visible to the driver, which indicates in pounds per square inch the pressure available for braking.

2. Vacuum brakes. After January 1, 1966, every truck-tractor and truck used for towing a vehicle equipped with vacuum operated brakes and every truck with three (3) or more axles using vacuum in the operation of its brakes, except those in driveaway or towaway operations, shall be equipped with a warning signal, other than a gauge indicating vacuum, readily audible or visible to the driver, which will operate at any time the vacuum in the vehicle's supply reservoir or reserve capacity is less than eight (8) inches of mercury.

3. Combination of warning devices. When a vehicle required to be equipped with a warning device is equipped with both air and vacuum power for the operation of its own brakes or the brakes on a towed vehicle, the warning devices may be, but are not required to be, combined into a single device which will serve both purposes. A gauge or gauges indicating pressure or vacuum shall not be deemed to be an adequate means of satisfying this requirement.

History: En. Sec. 1, Ch. 139, L. 1965.

Compiler's Notes

Section 53-639, referred to in subdivisions (a) and (c) 4 of this section, was repealed by Sec. 12-109, Ch. 197, L. 1965.

Title of Act

An act to establish uniform and modern regulations relating to brakes on vehicles; requiring brakes on all vehicles and spe-

cifying exceptions thereto; requiring vehicles to be equipped with both service and parking brakes; establishing performance ability of brakes; defining hydraulic brake fluid; authorizing patrol board to adopt brake fluid standards and specifications; prohibiting the sale of brake fluid which does not meet specifications; repealing section 32-21-143, R. C. M., 1947, and all acts or parts of acts in conflict herewith.

32-21-143.2. **Performance ability of brakes.** Every motor vehicle and combination of vehicles, at all times and under all conditions of loading, upon application of the service brake, shall be capable of:

(a) Developing a braking force that is not less than the percentage of its gross weight tabulated herein for its classification,

(b) Decelerating to a stop from not more than twenty (20) miles per hour at not less than the feet per second per second tabulated herein for its classification, and

(c) Stopping from a speed of twenty (20) miles per hour in not more than the distance tabulated herein for its classification, such distance to be measured from the point at which movement of the service brake pedal or control begins.

Tests for deceleration and stopping distance shall be made on a substantially level (not to exceed plus or minus one per cent (1%) grade), dry, smooth, hard surface that is free from loose material.

Classification of Vehicles	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Brake system application and braking distance in feet from an initial speed of twenty (20) miles per hour
A Passenger vehicles with a seating capacity of ten (10) people or less including driver, not having a manufacturer's gross vehicle weight rating-----	52.8%	17	25
B-1 All motorcycles and motor-driven cycles	43.5%	14	30
B-2 Single unit vehicles with a manufacturer's gross vehicle weight rating of ten thousand (10,000) pounds or less-----	43.5%	14	30
C-1 Single unit vehicles with a manufacturer's gross weight rating of more than ten thousand (10,000) pounds --	43.5%	14	40
C-2 Combination of a two-axle towing vehicle and a trailer with a gross trailer weight of three thousand (3,000) pounds or less	43.5%	14	40
C-3 Buses, regardless of the number of axles, not having a manufacturer's gross weight rating -----	43.5%	14	40
C-4 All combinations of vehicles in driveaway-towaway operations -----	43.5%	14	40
D All other vehicles and combinations of vehicles -----	43.5%	14	50

History: En. Sec. 2, Ch. 139, L. 1965.

32-21-143.3. Maintenance of brakes. All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

History: En. Sec. 3, Ch. 139, L. 1965.

32-21-143.4. Hydraulic brake fluid. (a) The term "hydraulic brake fluid" as used in this section shall mean the liquid medium through which force is transmitted to the brakes in the hydraulic brake system of a vehicle.

(b) Hydraulic brake fluid shall be distributed and serviced with due regard for the safety of the occupants of the vehicle and the public.

(c) The Montana highway patrol board shall, after public hearing following due notice, adopt and enforce regulations for the administration of this section and shall adopt and publish standards and specifications for hydraulic brake fluid which shall correlate with, and so far as practicable conform to, the then current standards and specifications of the society of automotive engineers applicable to such fluid.

(d) No person shall distribute, have for sale, offer for sale, or sell any hydraulic brake fluid unless it complies with the requirements of this section. No person shall service any vehicle with brake fluid unless it complies with the requirements of this section.

History: En. Sec. 4, Ch. 139, L. 1965.

Repealing Clause

Section 5 of Ch. 139, Laws 1965 read

"Repealing section 32-21-143, R. C. M. 1947, and all acts or parts of acts in conflict herewith."

32-21-144. Brakes on motor-driven cycles.

Compiler's Notes

Section 32-21-143, referred to in sub-

section (a) in the parent volume, was repealed by Sec. 5, Ch. 139, Laws 1965.

32-21-149. Restrictions as to tire equipment. (a). * * * [Same as parent volume.]

(b) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that it shall be permissible to use farm machinery with tires having protuberances which will not injure the highway, and except also that it shall be permissible to use tire chains of reasonable proportions or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic or metal, upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid.

(d). * * * [Same as parent volume.]

History: En. Sec. 146, Ch. 263, L. 1955; amd. Sec. 1, Ch. 92, L. 1967.

Amendments

The 1967 amendment inserted "the" before "roadway" in subsection (b); and

inserted "or pneumatic tires, the traction surfaces of which have been embedded with material such as wood, wire, plastic or metal" after "proportions" in subsection (c).

32-21-149.1. Fenders, splash aprons or flaps required on certain vehicles—dimension and location—violation a misdemeanor—penalty. (a) It shall be unlawful for any person to move, or permit to be moved, any truck, bus, truck-tractor, trailer or semitrailer, as defined in sections 32-2102 to 32-2105, R. C. M. 1947, inclusive, upon the public highways without having first equipped the rearmost wheels or set of wheels of such vehicle with fenders, splash aprons or flaps. Such fenders, splash aprons or flaps shall be designed, constructed and attached to the vehicle in such manner so as to arrest and deflect dirt, mud, water, rocks and other substances which may be picked up by the rear wheels of such vehicle and thrown into the air, as follows:

(1) If the vehicle is equipped with fenders the same shall extend in full width from a point above and forward of the center of the tire or tires over and to the rear thereof.

(2) If the vehicle is equipped with splash aprons or flaps the same shall extend downward in full width from a point not lower than halfway between the center of the tire or tires and the top of said tire or tires and to the rear thereof.

(3) If the vehicle is in excess of eight thousand (8,000) pounds gross vehicle weight, such fenders, splash aprons or flaps shall extend downward to a point that is not more than ten (10) inches above the surface of the highway when the vehicle is empty.

(4) If the vehicle is eight thousand (8,000) pounds, or less, gross vehicle weight, such fenders, splash aprons or flaps shall extend downward to a point that is not more than twenty (20) inches above the surface of the highway when the vehicle is empty.

(b) Fenders, splash aprons or flaps, as used in paragraph (a) of this section shall be deemed to be of sufficient size and construction as to comply with the requirements thereof, if constructed as follows:

(1) When measured on the cross-sections of the tread of the wheel or on the combined cross-sections of the treads of multiple wheels, such fender, splash apron or flap extends at least to each side of the width of the tire or of the combined width of the multiple tires, as the case may be; and

(2) Such fender, splash apron or flap is so constructed as to be capable at all times of arresting and deflecting such dirt, mud, water, or other substance as may be picked up and carried by such wheel or wheels.

(c) Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10) nor more than twenty-five dollars (\$25), or by imprisonment in the county jail for a period of not more than thirty (30) days, or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 286, L. 1969.

Title of Act

An act to require fenders or covers on certain wheels of specified types of motor

vehicles; defining the dimensions and locations of such fenders or covers; and providing penalties for any violation of this act.

32-21-150.1. Seat belts required in new vehicles. It is unlawful for any person to buy, sell, lease, trade or transfer from or to Montana residents at retail an automobile, which is manufactured or assembled commencing with the 1966 models, unless such vehicle is equipped with safety belts installed for use in the left front and right front seats thereof, and no such vehicle shall be operated in this state unless such belts remain installed.

History: En. Sec. 1, Ch. 115, L. 1965.

Title of Act

An act requiring that seat belts be installed in all automobiles manufactured or assembled commencing with the 1966

models; directing the highway patrol supervisor to establish specifications and requirements for approved types of safety belts and attachments; and providing a penalty.

32-21-150.2. Specifications for seat belts. All such safety belts must be of a type and must be installed in a manner approved by the highway patrol supervisor. The highway patrol supervisor shall establish specifications and requirements for approved types of safety belts and attachments thereto. The highway patrol supervisor will accept, as approved, all seat belt installations and the belt and anchor meeting the society of automotive engineers' specifications.

History: En. Sec. 2, Ch. 115, L. 1965.

32-21-150.3. Penalty for seat belt violations. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not to exceed one hundred dollars (\$100.00).

History: En. Sec. 3, Ch. 115, L. 1965.

32-21-155.1. Annual inspection of school buses. (1) The Montana highway patrol shall perform the annual inspection of school buses at least thirty (30) days prior to the beginning of the school term and reinspect the buses, if necessary, before the beginning of the school term.

(2) The Montana highway patrol's inspection shall determine if the school buses meet the minimum standards for school buses as adopted by the board of education.

History: En. 32-21-155.1 by Sec. 2, Ch. 179, L. 1969.

Cross-References

Reimbursements to schools for transportation of pupils, sec. 75-3413.

32-21-163. Unlawful operation by child under eighteen—concurrent original jurisdiction of district court and justice court—penalties—impounding of vehicle, when. The district courts and the justice courts of the state of Montana and the municipal and police courts of cities and towns shall have concurrent original jurisdiction in all proceedings concerning the unlawful operation of motor vehicles by children under the age of eighteen (18) years. Whenever, after a hearing before the court, it shall be found that a child under the age of eighteen (18) years has unlawfully operated a motor vehicle, the court may (a) impose a fine, not exceeding fifty dollars (\$50), provided such child shall not be imprisoned

for failure to pay such fine, (b) may revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court, and (c) may order any motor vehicle owned or operated by such child to be impounded by the probation officer for such time, not exceeding sixty (60) days, as shall be fixed by the court; provided, however, that if the court shall find that the operation of such motor vehicle was without the consent of the owner, then such vehicle shall not be impounded. Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child with the consent of the owner shall be impounded until the fine shall be paid, or may order that the driver's license of such child shall be taken up and held by the probation officer until payment of said fine, or may cause both said motor vehicle and said driver's license to be taken up and impounded until such fine shall be paid; but no child shall be committed to or held in any detention facility or jail by reason of nonpayment of such fine.

History: En. Sec. 1, Ch. 215, L. 1959; amd. Sec. 1, Ch. 188, L. 1963.

Amendment

The 1963 amendment inserted "and the justice courts" and "and the municipal and police courts of cities and towns" in

the first sentence; substituted "concurrent original jurisdiction" for "exclusive original jurisdiction" in the first sentence; and added to clause (a) of the second sentence the words "provided such child shall not be imprisoned for failure to pay such fine."

32-21-164. Summons—issuing to child under eighteen. Whenever any child under the age of eighteen (18) years shall unlawfully operate a motor vehicle in the presence of any peace officer of any county, city or town, or in the presence of any state highway patrolman, such officer may deliver to said child a form of summons describing the nature of the offense, with instructions thereon to report to the district court or a justice court of the county or the municipal or police court of the city or town wherein the offense occurs; and the court shall be informed thereof by the delivery of a copy of said summons to the probation officer, who shall in turn deliver the same to the judge or justice of the peace.

History: En. Sec. 2, Ch. 215, L. 1959; amd. Sec. 2, Ch. 188, L. 1963.

Amendment

The 1963 amendment inserted "or a

justice court" and "or the municipal or police court of the city or town"; and substituted "judge or justice of the peace" for "district judge" at the end of the section.

32-21-166. Vehicle equipment safety compact—text. This act shall be known and may be cited as the "Vehicle Equipment Safety Compact."

ARTICLE I—FINDINGS AND PURPOSES

(a) The party states find that: (1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional co-operation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment, and to accomplish

this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to: (1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II—DEFINITIONS

As used in this compact: (a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III—THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Vehicle Equipment Safety Commission" hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission may appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission, and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there be no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there be no executive director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any party state, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party states or their subdivisions.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency and may receive, utilize and dispose of the same.

(i) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(j) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency

or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE IV—RESEARCH AND TESTING

The commission shall have power to: (a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the funds necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or co-ordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V—VEHICULAR EQUIPMENT

(a) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than sixty (60) days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report, which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commissioner of such party state shall submit any commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six (6) months of the sending of the notice, and, upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation or code is necessary to the public safety, and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

ARTICLE VI—FINANCE

(a) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third (1/3) in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall

indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article III (h) of this compact, provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article III (h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual reports of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII—CONFLICT OF INTEREST

(a) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states, and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(b) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission; nor

to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII—ADVISORY AND TECHNICAL COMMITTEES

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may co-operate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

ARTICLE IX—ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any six (6) or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one (1) year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE X—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 109, L. 1965.

Compiler's Notes

Nebraska, pursuant to Legislative Bill 923, has withdrawn from the Vehicle Equipment Safety Compact.

Title of Act

An act to establish a stable and uniform basis for interstate co-operation to provide a means to speed up the development and adoption of uniform standards for new or improved automotive safety equipment and to be known as the Vehicle Equipment Safety Compact; setting forth the basic purposes of the compact; defining certain terms used in the act; establishing

a vehicle equipment safety commission and outlining the composition, duties and responsibilities of such commission; authorizing commission to establish salaries and retirement system for full-time employees; providing that commission will have an appointed commissioner from each party state with commission business expenses to be paid by compact commission; empowering commission to carry on "library type" research but prohibiting other type research and testing; authorizing commission to issue rules and regulations embodying performance requirements for items of equipment after conducting a needs study, publishing report of such study and holding hearings;

providing that party states are not obligated to adopt rules, regulations or codes of commission but must consider them; providing that official adoption of rules, regulations or codes of the commission shall require affirmative action by the legislature of the state of Montana before such rules, regulations or codes shall be effective in Montana; requiring commission to submit to the budget director of Montana the budget of the commission, the costs of which are to be apportioned among the member states on the basis that each member state contribute equal

moneys for one-third ($\frac{1}{3}$) of the total commission budget and that the remainder of the budget be apportioned according to the number of motor vehicles registered in the party state; requiring that commission adopt rules and regulations to minimize conflicts of interest; authorizing commission to establish advisory and technical committees; providing for entry into and withdrawal from compact; providing for construction and severability of act; repealing all acts or parts of acts in conflict herewith.

32-21-167. Legislative findings on equipment safety. The legislature finds that: (1) The public safety necessitates the continuous development, modernization and implementation of standards and requirements of law relating to vehicle equipment, in accordance with expert knowledge and opinion.

(2) The public safety further requires that such standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation.

(3) The Montana highway patrol board, acting upon recommendations of the vehicle equipment safety commission and pursuant to the Vehicle Equipment Safety Compact, provides a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by this act.

History: En. Sec. 2, Ch. 109, L. 1965.

32-21-168. Equipment requirements continued in force. (a) Provisions of sections 32-21-114 to 32-21-161, inclusive, R. C. M., 1947, shall continue to be of force and effect. The approval of the legislature of the state of Montana is a condition precedent to the taking effect of any rule, regulation or code that may be issued or adopted by the commission.

History: En. Sec. 3, Ch. 109, L. 1965.

32-21-169. State commissioner on vehicle equipment safety commission. The commissioner of this state on the vehicle equipment safety commission shall be the highway patrol supervisor who shall serve during his continuance as such officer. The commissioner of this state appointed pursuant to this section may designate an alternate from among the officers and employees of his agency to serve in his place and stead on the vehicle equipment safety commission. Subject to the provisions of the compact and bylaws of the vehicle equipment safety commission, the authority and responsibilities of such alternate shall be as determined by the commissioner designating such alternate.

History: En. Sec. 4, Ch. 109, L. 1965.

32-21-170. Retirement of equipment safety commission employees. The public employees retirement board of Montana may make an agree-

ment with the vehicle equipment safety commission for the coverage of said commission's employees pursuant to Article III (f) of the compact. Any such agreement, as nearly as may be, shall provide for arrangements similar to those available to the employees of this state and shall be subject to amendment or termination in accordance with its terms.

History: En. Sec. 5, Ch. 109, L. 1965.

32-21-171. Governmental agencies to co-operate with equipment safety commission. Within appropriations available therefor, the departments, agencies and officers of the government of this state may co-operate with and assist the vehicle equipment safety commission within the scope contemplated by Article III (h) of the compact. The departments, agencies and officers of the government of this state are authorized generally to co-operate with said commission.

History: En. Sec. 6, Ch. 109, L. 1965.

32-21-172. Documents filed and notices given by equipment safety commission. Filing of documents as required by Article III (j) of the compact shall be with the Montana highway patrol board. Any and all notices required by commission bylaws to be given pursuant to Article III (j) of the compact shall be given to the commissioner of this state and his alternate.

History: En. Sec. 7, Ch. 109, L. 1965.

32-21-173. Equipment safety commission budgets. Pursuant to Article VI (a) of the compact, the vehicle equipment safety commission shall submit its budgets to the state budget director.

History: En. Sec. 8, Ch. 109, L. 1965.

32-21-174. Equipment safety commission accounts. Pursuant to Article VI (e) of the compact, the state examiner is hereby empowered and authorized to inspect the accounts of the vehicle equipment safety commission.

History: En. Sec. 9, Ch. 109, L. 1965. repealed all acts and parts of acts in conflict therewith.

Repealing Clause

Section 10 of Ch. 109, Laws 1965 re-

32-21-175. Governor as executive head for compact purposes. The term "executive head" as used in Article IX (b) of the compact shall, with reference to this state, mean the governor.

History: En. Sec. 11, Ch. 109, L. 1965.

CHAPTER 22—HIGHWAY CODE—GENERAL PROVISIONS

- Section 32-2201. Legislative findings.
 32-2202. Legislative policy and intent.
 32-2203. General definitions.

32-2201. Legislative findings. The legislative assembly recognizes that safe and efficient highway transportation is of important interest to all of the people of the state and hereby determines and declares that:

(1) Inadequate highways, roads, and streets obstruct the free flow of traffic, increase costs of motor vehicle operation, endanger the health and safety of the citizens of the state, depreciate property values, and impede generally the economic progress of the state.

(2) The problems of establishing and maintaining adequate highways, roads, and streets, eliminating congestion, reducing accident frequency, providing parking facilities, and taking all necessary steps to insure safe and convenient transportation are urgent.

(3) Therefore, adequate and integrated systems of highways, roads, and streets are essential to the general welfare of the state of Montana.

(4) Providing adequate highway facilities is a proper public use and purpose, and that this act is necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

History: En. Sec. 1, Ch. 197, L. 1965.

Compiler's Note

This section and sec. 32-2202 were designated as Chapter 1 of the Highway Code, entitled "Legislative Intent."

Title of Act

An act to be known as the Montana Highway Code, for the codification and general revision of the laws pertaining to highways, including planning, construction, and maintenance; amending sections 16-1004, 16-2008, 16-2010, 16-2011, 16-3302, 53-122, 84-1831, 94-3202, and 94-3565, R. C. M. 1947, and repealing sections 16-1004.1, 16-1118, 16-1127, 16-1128, 16-2009, 16-2201 through 16-2204, 16-3311, 16-3312,

32-102 through 32-107, 32-201 through 32-208, 32-302 through 32-314, 32-316, 32-401 through 32-413, 32-415, 32-416, 32-501 through 32-507, 32-509 through 32-526, 32-601, 32-602, 32-701 through 32-711, 32-713 through 32-715, 32-901 through 32-905, 32-1002 through 32-1010, 32-1012 through 32-1014, 32-1016, 32-1301, 32-1601 through 32-1610, 32-1613 through 32-1618, 32-1620, 32-1622 through 32-1626, 32-1801 through 32-1804, 32-1901 through 32-1915, 32-2001 through 32-2010, 53-615 through 53-619, 53-621 through 53-623, 53-628 through 53-631, 53-634 through 53-639, 53-643, 84-1812 (1), 84-1812 (2), 84-1815, 84-1817, 89-821, 89-822, and 94-3201, R. C. M. 1947; providing for a savings clause and providing for the effective date of this act.

32-2202. Legislative policy and intent. Consistent with the foregoing determinations and declarations the legislative assembly intends:

(1) To place a high degree of trust in the hands of those officials whose duty it is, within the limits of available funds, to plan, develop, operate, maintain and protect the highway facilities of this state for present as well as for future use.

(2) To make the state highway commission custodian of the federal-aid and state highways, and to impose similar responsibilities upon the boards of county commissioners with respect to county roads and upon municipal officials with respect to the streets under their jurisdiction.

(3) That the state of Montana shall have integrated systems of highways, roads, and streets, and that the state highway commission, the counties and municipalities assist and co-operate with each other to that end.

(4) To provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate hereinafter imposed.

History: En. Sec. 2, Ch. 197, L. 1965.

32-2203. General definitions. Subject to additional definitions contained in subsequent chapters of this code which are applicable to specific chapters or parts, and unless the context otherwise requires, terms are defined as follows:

(1) "Abandonment"—Cessation of use of right of way (easement) or activity thereon with no intention to reclaim or use again. (Sometimes called "vacation.")

(2) "Auditor"—County auditor.

(3) "Authority"—Montana toll bridge authority.

(4) "Board"—Board of county commissioners.

(5) "Bridge"—Includes rights of way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills.

(6) "Clerk"—County clerk and recorder.

(7) "Commission"—State highway commission.

(8) "Committee"—Local improvement district committee of supervisors.

(9) "Condemnation"—Taking by exercise of the right of eminent domain.

(10) "Construction"—Supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, and mapping, costs of right of way or other interests in land and elimination of hazards at railway-grade crossings.

(11) "Control of access"—The condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(12) "County road"—Any public highway opened, established, constructed, maintained, abandoned, or discontinued in accordance with the provisions of part 2 of chapter 8 [chapter 40 of this title] and part 4 of chapter 5 [chapter 31 of this title] of this code.

(13) "Easement"—A right acquired by public authority to use or control property for a designated purpose.

(14) "Eminent domain"—The right of the state to take private property for public use.

(15) "Engineer"—State highway engineer.

(16) "Federal-aid highway"—Any public highway which is a portion of any of the federal-aid highway systems.

(17) "Federal-aid highway systems"—All of the systems named hereafter and their urban extensions.

(18) "Federal-aid interstate system"—That system of public highway selected by the commission in co-operation with adjoining states, subject

to the approval of the secretary of commerce as provided in the Federal Highway Act, as amended.

(19) "Federal-aid primary system"—That system of connected public highways designated by the commission subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(20) "Federal-aid secondary system"—That system of public highways not on the federal-aid primary or interstate systems selected by the commission in co-operation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in the Federal Highway Act, as amended.

(21) "Fee simple"—An absolute estate or ownership in property including unlimited power of alienation.

(22) "Highway"—Includes rights of way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(23) "Highway," "road," "street"—Whether they appear together or separately or are preceded by the adjective "public," these are general terms denoting a public way for purposes of vehicular travel, including the entire area within the right of way.

(24) "Highway authority (ies)"—The entity (ies) at any level of government authorized by law to construct and maintain highways.

(25) "Maintenance"—Preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic-control devices as are necessary for its safe and efficient utilization.

(26) "Public highways"—All streets, roads, highways, bridges, and related structures, which have been or shall be:

(a) Built and maintained with appropriated funds of the United States or the state or any political subdivision thereof.

(b) Dedicated to public use.

(c) Acquired by eminent domain.

(d) Acquired by adverse user by the public, jurisdiction having been assumed by the state or any political subdivision thereof.

(27) "Right of way"—A general term denoting land, property, or any interest therein, usually in a strip, acquired for or devoted to highway purposes.

(28) "State highway"—Any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the commission.

(29) "Superintendent"—County road superintendent.

(30) "Supervisor"—County road supervisor.

(31) "Surveyor"—County surveyor.

(32) "Toll bridge"—Any bridge constructed by the Montana toll bridge authority, together with all appurtenances, additions, alterations,

improvements, replacements, and the approaches thereto, lands used therefor, and improvements thereon.

(33) "Treasurer"—County treasurer.

History: En. Sec. 2-101, Ch. 197, L. 1965. **Compiler's Note**

This section was designated as Chapter 2 of the Highway Code, entitled "Definitions."

CHAPTER 23—CLASSIFICATION OF HIGHWAYS

Section 32-2301. Classification—highways and roads.

32-2302. Lewis and Clark highway.

32-2301. Classification—highways and roads. (1) Public highways of this state are classed as follows:

- (a) Federal-aid highways
- (b) State highways
- (c) County roads
- (d) City streets.

(2) All highways which are not designated, selected, established, constructed, or maintained by the commission are county roads or city streets.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued, in accordance with the provisions of part 2 of chapter 8 [chapter 40 of this title] and part 4 of chapter 5 [chapter 31 of this title] of this code.

(4) City streets are those public highways under the jurisdiction of municipal officials.

History: En. Sec. 3-101, Ch. 197, L. 1965. **Compiler's Note**

This chapter was designated as Chapter 3 of the Highway Code, entitled "Classification of Highways."

32-2302. Lewis and Clark highway. There is hereby established the Lewis and Clark highway. It shall be composed of the following existing routes: (1) From the Idaho state line west of Lolo Hot Springs, Montana, to the junction with U. S. highway ninety-three (93) at Lolo.

(2) Thence north from Lolo on U. S. highway ninety-three (93) to Missoula.

(3) Thence east from Missoula on U. S. highway twelve (12) and ten (10) to Garrison.

(4) Thence east from Garrison on U. S. highway twelve (12) through Forsyth and Baker to the North Dakota state line.

History: En. Sec. 3-102, Ch. 197, L. 1965.

CHAPTER 24—ASSENT TO FEDERAL AID—STATE HIGHWAY COMMISSION, POWERS AND DUTIES

Section 32-2401. Assent to federal-aid acts.

32-2402. State highway commission.

32-2403. Commission members—qualifications—appointment.

- 32-2404. Commission members—bond—expenses.
- 32-2405. Commission—chairman—meetings.
- 32-2406. General power of commission.
- 32-2407. Commission to designate highways.
- 32-2408. Designation of highways not located entirely within the state.
- 32-2409. Duties of commission—reports.
- 32-2410. Compilation of statistics—investigation—consultation.
- 32-2411. Agreements concerning effects of weight on highways.
- 32-2412. Seeding along highways.
- 32-2413. Description and plan of new highway or reconstructed or controlled access facility—recording.
- 32-2414. Relocation of utilities facilities—hearings—order.
- 32-2415. Relocation—costs.
- 32-2416. Relocation—definitions.
- 32-2417. Certification and payment of claims.
- 32-2418. Prosecution for violation.
- 32-2419. Ports of entry and checking stations authorized.
- 32-2420. Checking stations required at major points of entry into state.
- 32-2421. Co-operation in use of ports of entry and checking stations.
- 32-2422. Purposes of act.
- 32-2423. Purposes for which federal funds to be expended.
- 32-2424. Extent of interest acquired.
- 32-2425. Expenditure of funds.
- 32-2426. Commission to fence along state highways through open range where livestock a hazard—gates—"open range" defined.
- 32-2427. Commission to designate areas where fencing needed.

32-2401. Assent to federal-aid acts. (1) The legislative assembly, for and on behalf of the state of Montana, assents to the provisions of the Federal-Aid Road Act, approved July 1, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto.

(2) The commission may, for and on behalf of the state, enter into all contracts and agreements with the United States or any officer, department, or bureau thereof relating to the construction, reconstruction, repair, and maintenance of highways in the state.

(3) The commission may make all rules necessary to comply with the provisions of the acts assented to, and all other acts granting aid for public highways, and to obtain for the state the full benefits of such acts.

(4) The commission may do all other things necessary or required to carry out fully the co-operation contemplated by the acts of Congress assented to.

History: En. Sec. 4-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 24 to 27, inclusive, of this title (except secs. 32-2419 to 32-2421) were des-

ignated as Chapter 4 of the Highway Code, entitled "State Administration." Sections 32-2401 to 32-2418 herein were designated as Part 1 of Chapter 4, entitled "Assent to Federal Aid. State Highway Commission, Powers and Duties."

32-2402. State highway commission. The state highway commission consists of five (5) members to be appointed by the governor with the consent of the senate. Members of the commission now holding office shall continue until the expiration of their terms.

History: En. Sec. 4-102, Ch. 197, L. 1965.

Compiler's Notes

Chapter 141, Laws 1969 created an interim committee to conduct a compre-

hensive study of the administration and operation of the Montana highway department in co-operation with the state highway commission and provided an appropriation. Chapter 377, Laws 1969 provided for the issuance and sale of

bonds by the state board of examiners headquarters building and complex at or
for the purpose of acquiring a site for near Helena.
and erecting a state highway commission

32-2403. Commission members—qualifications—appointment. (1) Each member shall be a citizen of the United States and a resident of the state of Montana.

(2) One (1) member shall be a bona fide resident of and appointed from each of these districts, each composed of the counties named:

(a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Lewis and Clark, Jefferson, Broadwater.

(b) District 2. Powell, Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Wheatland, Park, Sweet Grass.

(c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Judith Basin.

(d) District 4. Fergus, Petroleum, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan.

(e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Rosebud, Treasure, Custer, Powder River, Carter, Fallon.

(3) (a) The terms of office of the members of the state highway commission shall be for four (4) years, and shall expire on the first day of February.

(b) If a vacancy occurs, the governor shall appoint with the consent of the senate a person having the qualifications herein provided who shall hold office only for the unexpired portion of the term in which the vacancy occurs.

(4) (a) No two (2) members shall at the time of appointment or thereafter during their respective terms of office be residents of the same district.

(b) Not more than three (3) members shall at the time of appointment or thereafter during their respective terms be members of the same political party.

(c) No elective state official or state officer during the term of office to which he was elected or appointed and no state employee shall be a member of the commission.

(d) No member shall be removed from office by the governor before the expiration of his term except for a disqualifying change of residence or for a cause based upon a determination of incapacity, incompetence, neglect of duty, or malfeasance in office.

History: En. Sec. 4-103, Ch. 197, L. 1965.

32-2404. Commission members—bond—expenses. (1) Each member shall give bond conditioned for the faithful performance of his duties in the sum of ten thousand dollars (\$10,000).

(2) Each member shall receive twenty dollars (\$20) per diem for each day actually spent in the performance of his duties and his actual neces-

sary traveling and other expenses in going to, attending, and returning from meetings of the commission. Each member shall also receive his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be required of him by a majority vote of the commission. In no event shall a member's per diem payments exceed two thousand dollars (\$2,000) in any one (1) year.

History: En. Sec. 4-104, Ch. 197, L. 1965.

32-2405. Commission—chairman—meetings. (1) Annually the commission shall elect one (1) of its members as chairman. Election as chairman shall not interfere with the member's right to vote on all matters before the commission.

(2) The commission shall meet at least once each month for the purpose of transacting business including the consideration of claims and the letting of contracts.

(3) Three (3) members shall constitute a quorum. No resolution, motion, or other decision of the commission shall be adopted or passed without the favorable vote of at least three (3) members.

History: En. Sec. 4-105, Ch. 197, L. 1965.

32-2406. General power of commission. The commission may plan, lay out, alter, construct, reconstruct, improve, repair, maintain, and abandon highways on the federal-aid systems and state highways. It may co-operate and contract with counties and municipalities to provide assistance in performing such functions on other highways and streets.

History: En. Sec. 4-106, Ch. 197, L. 1965.

32-2407. Commission to designate highways. (1) The commission shall designate such public highways in the state as shall be classed as the federal-aid primary system.

(2) The commission shall in co-operation with the board of county commissioners, select such public highways in the state as shall be classed as the federal-aid secondary system, taking into consideration the traffic count on said highway, the continuity of said highway in relation to the state highway systems as the same may connect or tie into a unified system of federal-aid highways and the taxable valuations which are affected by said highway.

(3) The commission shall, in co-operation with adjoining states, select the routes of the federal-aid interstate system.

(4) The commission shall designate such public highways in the state as shall be classed as state highways and make necessary rules and regulations for the construction, repair, maintenance, and marking of state highways and bridges.

History: En. Sec. 4-107, Ch. 197, L. 1965; amd. Sec. 1, Ch. 201, L. 1967.

after "secondary system" at the end of subsection (2).

Amendments

The 1967 amendment added the passage beginning, "taking into consideration"

Commission Regulations as Evidence

In action for wrongful death of driver of state highway truck while sanding road

in snowstorm, it was error to admit into evidence Safety Manual adopted by highway commission and requiring that engineers, supervisors and foremen erect warning devices upon highway before

beginning work since requirement imposed no duty upon deceased driver to erect warning devices. *Williams v. Maley*, 150 M 261, 434 P 2d 398.

32-2408. Designation of highways not located entirely within the state. (1) The commission may designate highways subject to improvement under the provisions of the Federal-Aid Road Act, approved July 11, 1916, the Federal Highway Act, approved November 9, 1921, and all amendments thereto, even though such highways are not located entirely and continuously within the boundaries of the state. Such designations shall meet the following conditions:

(a) That the highway is on an approved federal-aid route and eligible for improvement under the federal-aid acts.

(b) That the location of a portion of the route outside the boundaries of the state is necessary because of natural geographical or physical conditions which make the construction of the highway within the state impossible or impracticable.

(c) That the portion of the route located outside the state does not connect with and is not a part of the state highway system of the adjoining state.

(2) The commission may expend funds for the construction, reconstruction, engineering, administration, betterment, and maintenance of such highways. It may do all things necessary or required to carry out fully the co-operation contemplated under the federal-aid acts with regard thereto.

History: En. Sec. 4-108, Ch. 197, L. 1965.

32-2409. Duties of commission—reports. The commission shall: (1) Make all rules and regulations necessary for its government.

(2) Maintain and preserve all its records in its office at the capitol, keeping its office open at such times as its business shall require.

(3) File and preserve:

(a) A record of all proceedings and orders pertaining to the matters under its direction.

(b) Copies of all plans, specifications, contracts, estimates and official acts.

(4) Prepare and submit to the governor on or before the fifteenth day of each month a report of work constructed, under construction, and proposed for construction, the progress made during the preceding month, and recommendation for improvements and their estimated costs.

(5) Report as provided in section 2 [82-4002] of this act.

History: En. Sec. 4-109, Ch. 197, L. 1965; amd. Sec. 11, Ch. 93, L. 1969.

Amendments

The 1969 amendment, in subsection (5),

substituted the specified reporting requirement for provisions detailing a required biennial report to the governor and the legislative assembly.

32-2410. Compilation of statistics—investigation—consultation. (1) The commission shall compile statistics regarding public highways throughout the state and collect all related information deemed expedient.

(2) It shall investigate various methods of construction adapted to different sections of the state, and decide the best methods of construction and maintenance of highways, bridges, and road markers.

(3) The commission and the state highway engineer may be consulted at all reasonable times by county officers having care and authority over highways and bridges and shall advise them on construction, repair, alteration, or maintenance.

(4) The commission and the engineer shall furnish such information and advice as may be requested by persons interested in the construction, maintenance, and marking of public highways. They shall at all times lend their aid in promoting highway improvement throughout the state.

History: En. Sec. 4-110, Ch. 197, L. 1965.

32-2411. Agreements concerning effects of weight on highways. (1) The commission may contract with the United States or any state or group of states, or agencies thereof, or any nonprofit association, on a joint or co-operative basis, to study, analyze, or test the effects of weights on highways. Studies or tests shall seek solutions to the problems connected with the imposition of motor vehicle weights on highways.

(2) Studies or tests may be made either by designating existing highways or by constructing test strips, including natural resource roads.

History: En. Sec. 4-111, Ch. 197, L. 1965.

32-2412. Seeding along highways. (1) After a federal-aid or state highway is constructed, the commission shall seed borrow pits, slopes and shoulders to an adaptable perennial grass or combination of perennial grasses and legumes whenever establishment of perennial grass covers seem suitable. The seed shall be certified.

(2) The commission shall seek joint recommendations and specifications as to time and method of seeding, fertilizing practices and grass species from the Montana extension service, the experiment station, and the soil conservation service.

History: En. Sec. 4-112, Ch. 197, L. 1965.

32-2413. Description and plan of new highway or reconstructed or controlled access facility—recording. (1) Whenever the commission shall establish the location width, and lines of any new, reconstructed, or proposed highway, or declare any road, street or highway as a controlled access facility, it shall make a description and plan showing the center line and the established width, the immediate boundary lines of all private property over, across or through which said highway shall pass, the name or names of the owner thereof, the boundaries of that part of such private ownership as shall be included within the right of

way of said highway and the parcel number assigned to that part of each ownership included within said highway right of way, together with the project number under which said highway shall be or is proposed to be constructed or reconstructed.

(2) That reference to the project number, parcel number, and section, or quarter section, tract, block or lot from which the same has been subdivided shall constitute good and valid description of said parcel in all deeds given to or received from the state of Montana wherein any parcel shall be transferred.

History: En. Sec. 4-113, Ch. 197, L. 1965; amd. Sec. 1, Ch. 131, L. 1969.

Amendments

The 1969 amendment inserted reference to reconstructed highways in subsection (1) and added "the immediate boundary * * * to be constructed or reconstructed" and rewrote subsection (2) which formerly called for recording of description

and plan and copy of commission resolution in a special book to be furnished to county clerk and recorder by the commission.

Effective Date

Section 2 of Ch. 131, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

32-2414. Relocation of utilities facilities—hearings—order. (1) After appropriate hearings, the commission may make and publish reasonable regulations for the installation, construction, maintenance, repair, renewal, or relocation of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (hereafter called "facilities") of any utility in, on, along, over, across, through or under any project on any of the federal-aid systems.

(2) The commission shall give written notice of the place and time of a public hearing to determine the necessity of any relocation of facilities to all concerned not less than twenty (20) days before the hearing. Hearing may be waived in writing by the utility concerned or other interested parties.

(3) After the hearing, the commission may determine that any such facilities must be relocated. If so, the utility owning or operating the facilities shall relocate them in accordance with the valid order of the commission. The utility and its successors and assigns may maintain and operate the relocated facilities, with the necessary appurtenances, in the new location.

History: En. Sec. 4-114, Ch. 197, L. 1965.

32-2415. Relocation—costs. Seventy-five per cent (75 %) of all costs of relocation, including the costs of acquisition of new right of way, of dismantling, and of removal, shall be paid by the commission as a cost of highway construction.

History: En. Sec. 4-115, Ch. 197, L. 1965.

32-2416. Relocation—definitions. For the purposes of the sections relating to relocation of utilities facilities, terms are defined as follows: (1) Utility—Includes publicly, privately, and co-operatively owned utilities.

(2) **Cost of relocation**—Includes the entire amount paid by the utility properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(3) **Federal-aid systems**—Includes the federal-aid primary system, the federal-aid secondary system, the federal-aid interstate system, and urban extensions of all of them.

(4) **Interstate system**—Includes any highway now included or which shall hereafter be included as a part of the National System of Interstate and Defense Highways, provided for in the Federal-Aid Highway Act of 1956 and supplements or amendments.

History: En. Sec. 4-116, Ch. 197, L. 1965.

32-2417. Certification and payment of claims. (1) All accounts and expenditures shall be certified by the state highway engineer and paid by the state treasurer upon warrants drawn by the state auditor out of the proper funds.

(2) The commission shall certify the fund against which the warrant is to be drawn and state the project to which the payment will apply.

(3) The commission shall keep accounts showing the amount of money received for each project and the itemized expenses therefor.

History: En. Sec. 4-117, Ch. 197, L. 1965.

32-2418. Prosecution for violation. The commission shall prosecute any person guilty of violation of this code.

History: En. Sec. 4-118, Ch. 197, L. 1965.

32-2419. Ports of entry and checking stations authorized. To augment and help make more efficient and effective the enforcement of certain laws of the state of Montana, the state highway commission is hereby authorized and directed to establish from time to time temporary or permanent ports of entry or checking stations upon any highways in the state of Montana and at such places as the state highway commission shall deem necessary and advisable.

History: En. Sec. 1, Ch. 137, L. 1965.

Compiler's Note

Sections 32-2419 to 32-2421, inclusive, were not enacted as a part of the Highway Code. They did, however, become effective on the same date as the Highway Code, December 31, 1966.

Title of Act

An act authorizing and directing the state highway commission to establish temporary and permanent ports of entry and checking stations.

32-2420. Checking stations required at major points of entry into state. In addition to the power granted to the state highway commission in section 1 [32-2419] of this act, it shall be the duty of the commission to establish checking stations at convenient points on the major highways

entering this state, and such checking stations shall be kept open at all times.

History: En. Sec. 2, Ch. 137, L. 1965.

32-2421. Co-operation in use of ports of entry and checking stations. The state highway commission shall co-operate with all other agencies of this state, or any political subdivisions thereof, in the use of such ports of entry or checking stations, so that maximum use can be made of such facilities in enforcement of the laws of this state.

History: En. Sec. 3, Ch. 137, L. 1965.

Effective Date

Budget

Section 4, Ch. 137, Laws 1965, related to preparation of the budget for the 1967-1968 biennium and is omitted as temporary.

Section 5 of Ch. 137, Laws 1965 read "This act is effective December 31, 1966."

32-2422. Purposes of act. (1) To promote the safety, convenience and enjoyment of travel on, and protection of the public investment in the highways of this state.

(2) To restore, preserve and enhance scenic beauty within the right of way of and adjacent to such highways.

(3) To entitle the state to receive and expend the three per centum (3%) nonmatching funds from the United States pursuant to the provisions of title 23, United States Code.

History: En. Sec. 1, Ch. 285, L. 1967.

land for the restoration, preservation and enhancement of scenic beauty within and adjacent to federal-aid highways.

Title of Act

An act providing for the acquisition of

32-2423. Purposes for which federal funds to be expended. The state highway commission is authorized to expend funds apportioned to the state under Public Law 89-285, Title III, Section 301 (a), October 22, 1965, 79 Statute 1032, for the following purposes:

(a) For landscape and roadside development within the rights of way of federal-aid highways of this state;

(b) For acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways; and

(c) For acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities within or adjacent to federal-aid highway rights of way reasonably necessary to accommodate the traveling public.

History: En. Sec. 2, Ch. 285, L. 1967.

32-2424. Extent of interest acquired. The commission may acquire the fee simple or any lesser estate or interest as determined by the commission to be reasonably necessary to accomplish the purposes of this act. Such acquisition may be made by gift, purchase, or exchange.

History: En. Sec. 3, Ch. 285, L. 1967.

32-2425. Expenditure of funds. The commission shall expend only nonmatching funds authorized under the provisions of section 319 (b)

of the Federal Highway Beautification Act of 1965, as amended, in carrying out the authority granted by this act.

History: En. Sec. 4, Ch. 286, L. 1967. "This act shall be effective on and after July 1, 1967."

Effective Date

Section 5 of Ch. 286, Laws 1967 read

32-2426. Commission to fence along state highways through open range where livestock a hazard—gates—"open range" defined. (1) The highway commission shall fence the right of way of any part of the state highway system that is constructed and/or reconstructed, after the effective date of this act, through open range where livestock present a hazard to the safety of the motorist where a fence is constructed, adequate stock gates or stock passes, as necessary, shall be provided to make land on either side of the highway usable for livestock purposes.

(2) For the purpose of this act the term "open range" means all private and public lands in the state of Montana not inclosed by a fence of not less than four (4) wires in good repair but does not include herd districts as created and defined by section 46-1501, R. C. M. 1947.

History: En. Sec. 1, Ch. 311, L. 1969.

Title of Act

An act requiring the highway commission to fence highways that run through open range where livestock present a

safety hazard to the motorist; defining open range for the purpose of this act; and authorizing the highway commission to determine where in open range areas there is a sufficient safety hazard from livestock to warrant fencing.

32-2427. Commission to designate areas where fencing needed. The highway commission shall designate the open range areas where livestock present a sufficient safety hazard to the motorist to warrant fencing by the highway commission.

History: En. Sec. 2, Ch. 311, L. 1969.

CHAPTER 25—STATE HIGHWAY ENGINEER AND OTHER EMPLOYEES

Section 32-2501. State highway administrator and other employees.

32-2502. Commission employees—salaries.

32-2503. Division of maintenance and control.

32-2501. State highway administrator and other employees. (1) The commission may appoint an executive officer to be known as the "state highway administrator."

(2) The administrator shall be solely responsible to the commission and shall be charged with directing operation of the highway department and implementing the policies established by the commission.

(3) The administrator shall take and file the constitutional oath of office before entering upon the performance of his duties, and shall give a bond in such sum as the commission may require.

(4) The commission may remove the administrator at any time for cause.

(5) Wherever used in these codes the term "state highway engineer" or "engineer" shall mean "state highway administrator."

History: En. Sec. 4-201, Ch. 197, L. 1965; amd. Sec. 1, Ch. 312, L. 1967.

Compiler's Note

This chapter was designated as Part 2 of Chapter 4 of the Highway Code, entitled "State Highway Engineer and Other Employees."

Amendments

The 1967 amendment rewrote this section. Prior to amendment it read, "(1) The commission may appoint a professional engineer to be known as the 'state highway engineer,' and shall fix his salary; (2) The state highway engineer shall perform any acts or duties relating to the functions of the commission which

the commission may impose; (3) The engineer shall take and file the constitutional oath of office before entering upon the performance of his duties, and shall give a bond in such sum as the commission may require; (4) The commission may remove the engineer at any time for cause."

Separability Clause

Section 2 of Ch. 312, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

32-2502. Commission employees—salaries. (1) The commission shall employ such personnel as it shall deem necessary and fix their compensation. Compensation shall be paid from funds deposited to the credit of the commission.

(2) The commission may, in its discretion, assign personnel for service to any county at the request of the board of county commissioners. The expense of this service shall be paid to the commission by the county.

History: En. Sec. 4-202, Ch. 197, L. 1965.

32-2503. Division of maintenance and control. The commission may organize and operate a division of maintenance and control to maintain highways constructed by the state and, by co-operation with boards of county commissioners, such other highways as the commission may deem necessary.

History: En. Sec. 4-203, Ch. 197, L. 1965.

CHAPTER 26—DISTRIBUTION AND APPORTIONMENT OF HIGHWAY CONSTRUCTION FUNDS

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| Section | 32-2601. | Distribution and use of proceeds of gasoline dealers' license tax. |
| | 32-2603. | Districts for apportionment of commission funds. |
| | 32-2604. | Construction or reconstruction of bridges. |
| | 32-2605. | Apportionment of state construction funds. |
| | 32-2606. | Apportionment of state funds to federal-aid primary highway system. |
| | 32-2607. | Apportionment of state funds to federal-aid secondary highway system. |
| | 32-2608. | Secondary highway information. |
| | 32-2609. | Apportionment of state funds to federal-aid interstate highway system. |
| | 32-2610. | Increases in expenditures. |
| | 32-2611. | Apportionment of state funds to federal-aid urban highways. |

32-2601. Distribution and use of proceeds of gasoline dealers' license tax. Six-tenths of one per cent (.6%) of all money received in payment of license taxes under the provisions of this act shall be deposited in the state park account in the earmarked revenue fund. All other money received, except that amount paid out of the state board of equalization's suspense account for gasoline tax refund shall be used and expended by

the state highway commission on the federal-aid highways in this state selected and designated under the provisions of the Federal-Aid Act, approved July 11, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to said federal highway system of federal-aid roads where such county seat is not on said system, and on such other roads as have been or may be authorized by the laws of Montana, for the collection and enforcement of this act, pursuant to the provisions of article XII, section 1 (b) of the constitution of the state of Montana. It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in accordance with the provisions of section 32-2605 through 32-2607; provided that nothing in this act shall be construed to conflict with said federal-aid highway acts and the rules by which they are administered. The state highway commission is authorized to enter into co-operative agreements with the national park service and the bureau of public roads for the purpose of maintaining national park approach roads in Montana.

Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motor boating is allowed, except for the payment of refunds as provided in section 84-1818, R.C.M. 1947. The legislative assembly hereby finds as a fact that of all the fuel sold in the state of Montana for consumption in internal combustion engines, not less than six-tenths of one per centum (.6%) is used for propelling boats on waterways of this state.

History: En. Sec. 4-301, Ch. 197, L. 1965; amd. Sec. 1, Ch. 251, L. 1967.

Compiler's Notes

This chapter was designated as Part 3 of Chapter 4 of the Highway Code, entitled "Distribution and Apportionment of Highway Construction Funds."

Section 84-1818, referred to in the last paragraph, was repealed by Sec. 20, Ch. 369, Laws 1969.

Amendments

The 1967 amendment substituted "Six-

tenths of one per cent (.6%)" for "One per cent (1%)" at the beginning of the first paragraph; substituted "section 32-2605 through 32-2607" for "sections 4-308 through 4-310" in the third sentence of the first paragraph; in the second paragraph, added "except for the payment of refunds as provided in section 84-1818, R. C. M. 1947" at the end of the first sentence; and substituted "six-tenths of one per centum (.6%)" for "one per centum (1%)" in the second sentence of the second paragraph.

32-2602. Repealed.

Repeal

Section 32-2602 (Sec. 4-302, Ch. 197, L. 1965), relating to limitations on expenditures for administration, dissemination

of public information and engineering connected with highway construction, was repealed by Sec. 1, Ch. 251, Laws 1969, effective March 6, 1969.

32-2603. Districts for apportionment of commission funds. All money available to the commission for highway construction purposes shall be apportioned among these financial districts, each composed of the counties named:

- District 1. Lincoln, Flathead, Lake.
- District 2. Glacier, Toole, Liberty, Hill, Blaine.
- District 3. Phillips, Valley, Daniels, Sheridan, Roosevelt.
- District 4. McCone, Richland, Dawson, Prairie, Wibaux.
- District 5. Fergus, Garfield, Petroleum.
- District 6. Pondera, Teton, Chouteau, Cascade, Judith Basin.
- District 7. Lewis and Clark, Jefferson, Broadwater.
- District 8. Sanders, Mineral, Missoula, Ravalli, Granite, Powell.
- District 9. Beaverhead, Deer Lodge, Silver Bow, Madison.
- District 10. Park, Gallatin, Sweet Grass, Meagher, Wheatland.
- District 11. Golden Valley, Musselshell, Stillwater, Yellowstone, Carbon, Big Horn, Treasure.
- District 12. Rosebud, Custer, Fallon, Powder River, Carter.

History: En. Sec. 4-306, Ch. 197, L.
1965.

32-2604. Construction or reconstruction of bridges. (1) The commission may allocate from state construction moneys available for the federal-aid highway system up to one million dollars (\$1,000,000) in any fiscal year for the construction or reconstruction of any major bridge or system of bridges on the primary or secondary highway systems. This may be done only when the use of regularly apportioned funds would prohibit or seriously delay the orderly and necessary highway construction program in the financial districts.

(2) When the commission, as a part of its finding of public necessity, declares that a particular bridge should be constructed or reconstructed on a designated portion of the primary or secondary highway, the allocation may be made. The allocation may be expended:

(a) On primary bridges when the engineer's estimate of the cost of construction or reconstruction is in excess of five hundred thousand dollars (\$500,000).

(b) On secondary bridges when the engineer's estimate of the state's share of the cost of construction or reconstruction is in excess of the total estimated future regular apportionment of state construction moneys to the federal-aid secondary system of the county or counties for a period of three (3) years.

(3) The allocation shall be made from available state construction moneys for the primary system before the apportionment provided for in section 4-309 [32-2606], and for the secondary system before the apportionment provided for in section 4-310 [32-2607].

History: En. Sec. 4-307, Ch. 197, L.
1965.

32-2605. Apportionment of state construction funds. Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter,

the commission shall apportion available state construction funds to the various federal-aid highway systems as may be required to match the amounts of federal aid available for expenditure on each respective system.

History: En. Sec. 4-308, Ch. 197, L. 1965.

32-2606. Apportionment of state funds to federal-aid primary highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall determine the amount of incompleted mileage of the federal-aid primary system within each of the financial districts.

(a) As a basis for determination of incompleted mileage, the commission shall compare the present condition of the system with the latest approved state standards. Any mileage failing to meet those standards shall be included in the determination as partially completed. The proportion of completion shall be determined by estimating the amount of work which must be performed to complete the highway.

(2) The commission shall then compute the ratio between the incompleted mileage in each district and the total incompleted mileage of the federal-aid primary system in the state.

(3) The commission shall then apportion available state construction funds to the federal-aid primary system in each district on the basis of the computed ratio.

History: En. Sec. 4-309, Ch. 197, L. 1965.

32-2607. Apportionment of state funds to federal-aid secondary highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds for the federal-aid secondary highway system among the financial districts. The proportion which each district shall receive shall be computed on the following basis:

(a) One-fourth ($\frac{1}{4}$) in the ratio of land area in each district to the total land area in the state.

(b) One-fourth ($\frac{1}{4}$) in the ratio of the rural population in each district to the total rural population in the state.

(c) One-fourth ($\frac{1}{4}$) in the ratio of the rural road mileage in each district to the total rural road mileage in the state.

(d) One-fourth ($\frac{1}{4}$) in the ratio of value of rural lands in each district to the total value of rural lands in the state.

(2) Funds apportioned to each district shall be further apportioned to each county therein on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, expenditures in any county may exceed the amount apportioned to that county to the extent of three (3) times the amount of the

last apportionment thereto. The amount of any such excess expenditures shall be deducted from future apportionments to that county.

(3) For the purposes of this section, terms are defined as follows:

(a) Rural population—Total population less the population in cities over five thousand (5,000) persons and their unincorporated fringe urban areas as reported in the latest federal census.

(i) Federal census population figures shall be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

(b) Rural road mileage—All road mileage outside of incorporated cities, exclusive of road mileage on the federal-aid primary highway system and the federal-aid interstate system.

(i) Rural road mileage reported by the road inventory of the commission shall be used in determining rural road mileage.

(c) Value of rural lands—Includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands shall be computed from the latest biennial report of the state board of equalization.

(ii) The basis for the value of state-owned lands shall be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the commissioner of state lands and investments.

(iii) The average value of privately owned lands shall be the average value of state-owned lands, if the actual value is not available.

History: En. Sec. 4-310, Ch. 197, L. 1965.

32-2608. Secondary highway information. On or before August 30 of each year, the commission shall inform each board of county commissioners of: (1) The total amount of secondary highway funds and the amount apportioned to each county.

(2) The location of proposed secondary highway projects when the information is available.

(3) Such other matters regarding secondary highway construction as the commission deems advisable and of interest to the counties.

History: En. Sec. 4-311, Ch. 197, L. 1965.

32-2609. Apportionment of state funds to federal-aid interstate highway system. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion available state construction funds for the federal-aid interstate highway system among the financial districts.

(2) The apportionment shall be based upon the ratio between the estimated cost of constructing or reconstructing the system in each district and the estimated cost of constructing or reconstructing the entire system within the state.

(3) The cost estimates to be used shall be those developed by the commission in accordance with the provisions of the Federal-Aid Highway Act of 1956, as amended.

History: En. Sec. 4-312, Ch. 197, L. 1965.

32-2610. Increases in expenditures. (1) The commission may increase the expenditures made in any financial district to the extent of:

(a) Fifteen per cent (15%) more than the amount of money allocated to such district in the latest year for the federal-aid primary system or the federal-aid secondary system.

(b) One hundred per cent (100%) more than the amount of money allocated to such district in the latest year for the federal-aid interstate highway system.

(2) The allocation of available state construction funds to any district for the next succeeding fiscal year shall be decreased by an amount equal to any increased expenditures.

History: En. Sec. 4-313, Ch. 197, L. 1965.

32-2611. Apportionment of state funds to federal-aid urban highways. (1) Annually, beginning July 1, 1965, and at the beginning of each fiscal year thereafter, the commission shall apportion state construction funds available for matching federal-aid urban funds to the cities in the state over five thousand (5,000) population in the ratio of urban population in each such city to the total urban population in all cities over five thousand (5,000) population in the state.

(2) For the purpose of this section, "urban population" is defined as population within the incorporated limits of cities over five thousand (5,000) population and that population within unincorporated urban fringe areas delineated and reported in the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, expenditures in any city may exceed the amount apportioned to that city. The amount of any such excess expenditures shall be deducted from future apportionments to that city.

History: En. Sec. 4-314, Ch. 197, L. 1965.

CHAPTER 27—MONTANA TOLL BRIDGE AUTHORITY

- Section 32-2701. Creation of authority—members—salary—officers—seal.
32-2702. Powers of authority.
32-2703. Resolution—estimates of costs.
32-2704. Limitations on placing of toll bridges.
32-2705. Contents of petition.
32-2706. Action by authority on petition.
32-2707. Powers of authority in connection with toll bridge bond issues.
32-2708. Reserve and contingency funds—deposit.
32-2709. Additional bond terms permitted.
32-2710. Toll charges—fixing—expiration.
32-2711. Revenue fund—sinking fund.
32-2712. Construction.

- 32-2713. State highway engineer—duties.
- 32-2714. Annual statement—records.
- 32-2715. Limitations on building bridges near toll bridges.
- 32-2716. Payment of bonds—free bridge.

32-2701. Creation of authority — members — salary — officers — seal.

(1) There is hereby created the Montana toll bridge authority, composed of members of the commission, who shall receive no compensation other than that received as members of the commission.

(2) The chairman of the commission shall be the chairman of the authority, and the state highway engineer shall be the secretary-treasurer. All contracts, bonds, and other instruments shall be executed in the name of the authority by the chairman and attested by the secretary-treasurer.

(3) The authority shall adopt a seal bearing its name which shall be affixed to such bonds, instruments, and records as the authority or the chairman may direct.

History: En. Sec. 4-401, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 4 of Chapter 4 of the Highway Code, entitled "Montana Toll Bridge Authority."

32-2702. Powers of authority. (1) The authority shall adopt rules and regulations for its own government and for the administration of this part [chapter] and the execution of the powers and duties hereby conferred.

(2) The authority may establish and construct a toll bridge or toll bridges upon any of the public highways of this state, together with approaches, wherever found and determined to be necessary for advantageous, and practicable for crossing any stream or body of water.

(3) The authority may issue toll bridge revenue bonds to pay the cost of any toll bridge.

History: En. Sec. 4-402, Ch. 197, L. 1965.

32-2703. Resolution—estimates of costs. (1) Whenever the authority finds and determines that the construction of any toll bridge is necessary, advantageous, and practicable, it shall adopt a resolution making such finding and determination and declaring that public convenience and necessity require the construction of the toll bridge.

(2) The resolution shall contain preliminary estimates of:

(a) The cost of construction.

(b) The amount of money to be raised by the issuance of revenue bonds.

(c) The probable amounts of money, property materials, or labor, if any, to be contributed from other sources in aid of construction.

(3) The authority shall also estimate the costs of maintaining, repairing, and operating the toll bridge, and the revenues to be derived from it.

(4) No toll bridge shall be constructed unless the authority first finds and determines that the probable revenues will be sufficient to pay

the costs of maintaining, repairing, and operating it, and to pay the principal and interest on revenue bonds issued to pay its costs.

(5) The failure of the authority to make the estimates required by this section or to make them in proper form shall in no way affect the validity or enforceability of any revenue bonds.

History: En. Sec. 4-403, Ch. 197, L. 1965.

32-2704. Limitations on placing of toll bridges. (1) No toll bridge shall be authorized or constructed over or across any stream within a radius of fifty (50) miles of either side of any free public bridge existing on that stream unless there shall first have been filed with the authority a petition requesting its construction.

(2) The petition shall be signed by:

(a) Not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of the county in which the toll bridge is proposed to be constructed; or

(b) Not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of both counties when the toll bridge is proposed to be constructed upon a stream which constitutes the boundary between two (2) counties.

History: En. Sec. 4-404, Ch. 197, L. 1965.

32-2705. Contents of petition. (1) The petition shall contain a statement showing the location of the proposed toll bridge and the locations of all free public bridges existing upon the same stream within a radius of fifty (50) miles of the proposed toll bridge. It shall also contain a concise statement of facts showing that the proposed construction is necessary, advantageous, and practicable.

(2) Several copies of the petition identical in form may be circulated. Each person circulating a copy must attach his affidavit that the signatures appearing thereon are genuine and that the signers knew the contents at the time of signing.

(3) All copies from each county shall be attached together as to form a single petition. The petition shall have attached to it before it is filed with the authority a certificate of the county clerk and recorder showing whether or not it has been signed by not less than twenty per cent (20%) of the taxpaying freeholders whose names appear on the last completed assessment roll of the county.

(4) The county clerk and recorder shall transmit the petition to the authority.

History: En. Sec. 4-405, Ch. 197, L. 1965.

32-2706. Action by authority on petition. (1) The authority shall meet and consider the petition within thirty (30) days after it is filed. It shall be the sole judge of the sufficiency of the petition.

(2) If the authority finds that the petition bears the required number of signatures and is in proper form, and finds and determines that the construction of the proposed toll bridge is necessary, advantageous, and practicable, it shall adopt a resolution making that finding and determination. The resolution shall also contain the estimates and data required by section 4-403 [32-2703].

(3) The authority's finding of the sufficiency of the petition shall be conclusive in favor of any innocent holder of bonds issued as a result of the presentation of the petition.

History: En. Sec. 4-406, Ch. 197, L. 1965.

32-2707. Powers of authority in connection with toll bridge bond issues. (1) In connection with the issuance and in order to secure the payment of toll bridge bonds, the authority may:

(a) Pledge all or any part of the tolls, income, profit, and revenue of any such toll bridge, and covenant to pay such tolls, income, profit, and revenue into appropriate funds.

(b) Covenant to fix and establish such tolls, rates, and charges as will provide at all times enough funds to:

(i) Pay all costs of operation, maintenance, and repairs of the toll bridge.

(ii) Meet and pay the principal of and interest on all toll bridge bonds as they severally become due and payable.

(iii) Create such reserves for the principal and interest of such bonds and to meet contingencies in operation and maintenance as the authority shall determine.

(c) Make such additional covenants as to tolls, rates and charges as it shall deem necessary to secure the payment of bonds.

(2) No truck, trailer, or automobile licensed in the name of the state of Montana or the United States or any branch or department thereof shall be required to pay for crossing any toll bridge.

History: En. Sec. 4-407, Ch. 197, L. 1965.

32-2708. Reserve and contingency funds—deposit. (1) The authority may create a special fund or funds, in addition to those required by this part [chapter], for moneys reserved for principal and interest on bonds and for meeting contingencies in the operation and maintenance of any toll bridge.

(2) It may determine the depository or depositories in which such funds shall be deposited and the manner in which such deposits shall be secured. Any bank or trust company incorporated under the laws of this state may act as a depository and may furnish such indemnifying bonds or pledge such securities as may be required by the authority.

History: En. Sec. 4-408, Ch. 197, L. 1965.

32-2709. Additional bond terms permitted. (1) The authority may:

(a) Provide for replacement of lost, destroyed, or mutilated bonds.

(b) Covenant against extending the time for the payment of the principal of or interest on any toll bridge bonds, directly or indirectly in any manner.

(c) Prescribe and covenant as to the events of default and terms and conditions upon which any or all toll bridge bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(d) Covenant as to the rights, liabilities, powers, and duties arising upon the breach of any covenant, condition, or obligation.

(e) Vest in a trustee or trustees the right to enforce any covenant made to secure or to pay toll bridge bonds, provide for their powers and duties, limit their liabilities, and provide the terms and conditions upon which the trustee or trustees or the holders or any proportion of them may enforce any such covenant.

(2) The authority may make such covenants and do any and all acts and things necessary or convenient or desirable in order to secure toll bridge bonds or to make them more marketable, notwithstanding that such covenants, acts or things may not be enumerated or expressly authorized. The legislative assembly intends to grant to the authority power to do all things in the issuance of toll bridge bonds and in providing for their security that may not be inconsistent with the constitution.

History: En. Sec. 4-409, Ch. 197, L. 1965.

32-2710. Toll charges—fixing—expiration. (1) The authority may fix and change rates of toll and other charges for all toll bridges built under the provisions of this part [chapter]. The rates and charges shall at all times be fixed at rates which will yield sufficient annual revenue to pay annual operating and maintenance expenses, to redeem and pay the principal of and interest on all bonds as they severally come due, and to create such reserves as the authority shall deem necessary.

(2) All tolls and other revenue shall constitute a trust fund for the security and payment of toll bridge bonds. They shall not be pledged for any other purpose as long as any of the bonds are outstanding and unpaid.

History: En. Sec. 4-410, Ch. 197, L. 1965.

32-2711. Revenue fund—sinking fund. (1) The authority shall adopt rules and regulations for the collection of tolls and the deposit thereof to the credit of the appropriate toll bridge revenue fund, and for the transfer therefrom to the appropriate sinking fund of money for the payment and redemption of bonds as they severally mature.

(2) The money remaining in each separate toll bridge revenue fund after providing the amount required for interest and redemption of bonds

shall be held and applied in accordance with the proceedings relating to the authorization of the bonds.

History: En. Sec. 4-411, Ch. 197, L. 1965.

32-2712. Construction. Whenever funds are available for the construction of any toll bridge, the commission shall let contracts by competitive bidding, after such notice and upon such terms as it shall prescribe.

History: En. Sec. 4-412, Ch. 197, L. 1965.

32-2713. State highway engineer—duties. The engineer shall have full charge of the construction, operation, and maintenance of all toll bridges authorized by the authority. Under the supervision of the authority, and subject to its rules and regulations, the engineer shall have charge of the collection of all tolls.

History: En. Sec. 4-413, Ch. 197, L. 1965.

32-2714. Annual statement—records. (1) The engineer shall keep full and complete accounts for each toll bridge constructed. Each year he shall cause to be prepared and filed in the office of the secretary of state a balance sheet and income and profit and loss statement showing the financial condition of each toll bridge.

(2) All books, records, and papers relating to toll bridges shall at all reasonable times [to] be open to the inspection of any citizen of the state.

History: En. Sec. 4-414, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted brackets around the word "to" in subsection (2) to denote surplusage.

32-2715. Limitations on building bridges near toll bridges. So long as any of the bonds issued for the construction of any toll bridge are outstanding and unpaid, there shall not be erected, constructed, or maintained any other bridge for public use over or across the stream upon which the toll bridge is located within a distance of twenty (20) miles on either side of the toll bridge. This prohibition does not apply to bridges in existence and being used at the time of the issuance of such bonds.

History: En. Sec. 4-415, Ch. 197, L. 1965.

32-2716. Payment of bonds—free bridge. When the bonds issued for the purpose of paying the cost of any toll bridge are retired, the cost of construction having thereby been repaid in full, the bridge shall thereafter be maintained and operated by the commission as a free bridge. The expense of any surveys and reports paid from the funds of the commission shall then be deemed fully repaid.

History: En. Sec. 4-416, Ch. 197, L. 1965.

CHAPTER 28—BOARD OF COUNTY COMMISSIONERS RESPONSIBILITY FOR COUNTY ROADS

- Section 32-2801. Powers and duties of county commissioners respecting county roads.
 32-2802. Right of way—contracts—control of traffic.
 32-2803. Plat books—surveyor—employees.
 32-2804. County contracts with state or federal agency.
 32-2805. Inspection of roads and construction work—compensation.
 32-2806. Purchase of machinery and materials.
 32-2807. Use of county road machinery.
 32-2808. Width of road.
 32-2809. Highways to follow subdivision or section lines.
 32-2810. Auto passes excluding livestock.
 32-2811. Auto passes on county roads.
 32-2812. Limit on amount expended in road district.
 32-2813. Reseeding of right of way areas.
 32-2814. County supervisors to control weeds and exterminate weed seeds—charges.
 32-2815. Board and others to furnish information.

32-2801. Powers and duties of county commissioners respecting county roads. (1) Each board of county commissioners shall have general supervision over the county roads within the county. The board may, in its discretion, divide the county into suitable road districts, and place each district in charge of a competent road supervisor. The board shall order and direct each supervisor in the work to be done in his district. If the board does not divide the county into districts, the county itself shall constitute one road district.

(2) Each board shall cause to be surveyed, viewed, laid out, recorded, opened, worked, and maintained such county roads as are petitioned for by freeholders. Guideposts shall be erected.

(3) Each board shall discontinue or abandon county roads when freeholders properly petition therefor.

(4) Each board may, in its discretion, cause to be done whatever may be necessary for the best interest of the county roads and the road districts.

(5) Each board shall make such reports relating to roads under its supervision as may be requested by the commission.

History: En. Sec. 5-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 28 to 31, inclusive, of this title were designated as Chapter 5 of the

Highway Code, entitled "County Administration." This chapter was designated as Part 1 of Chapter 5, entitled "Board of County Commissioners Responsibility for County Roads."

32-2802. Right of way—contracts—control of traffic. (1) Each board shall contract, agree for, purchase, or otherwise lawfully acquire right of way for county roads over private property. It may institute proceedings under sections 93-9901 to 93-9926, paying for such right of way from the county road fund. Cattle guards, appurtenances, and gates may be constructed and maintained adjacent to county roads.

(2) Subject to the limitations and restrictions provided in the codes for the letting of contracts, each board may let by contract the construction, maintenance and improvement of county roads, and the construction,

maintenance, or repair of bridges when the amount of work to be done exceeds the sum of one thousand dollars (\$1,000).

(3) Subject to the limitations and restrictions provided in the constitution and codes, each board may issue bonds upon the faith and credit of the county for the construction or improvement of county roads, state highways, and bridges.

(4) Each board may, in its discretion, limit or forbid, temporarily, any traffic or class of traffic on the county roads or any part thereof, when it is necessary in order to preserve or repair such roads.

History: En. Sec. 5-102, Ch. 197, L. 1955.

32-2803. Plat books — surveyor — employees. (1) Each board may, in its discretion, order the county surveyor, or some other surveyor if the county surveyor is incompetent, to prepare suitable plat books. Each board shall have recorded therein with the county clerk a full description of each county road, showing each course by bearing and distance, a full and complete map thereof, and a record of all proceedings with reference thereto.

(2) Each board may, in its discretion, employ a competent road supervisor, who shall serve during the pleasure of the board. Under the direction and control of the board he shall:

(a) Prescribe the times and places for all work to be done on the county roads.

(b) Report any delinquency or inefficiency of any person employed on any road.

(c) Perform such other duties as may be prescribed by the board.

(3) In any county in which the county surveyor is not paid an annual salary, he may by agreement be employed by the board to perform the services of road supervisor. He shall not be paid for any duty otherwise required by law to be performed by him as county surveyor.

(a) Nothing in this section shall be construed to alter or repeal the provisions of sections 5-308 and 5-309 of this chapter.

(4) In counties without a county surveyor, each board may appoint a county road superintendent. He shall have such duties, powers, and responsibilities as are set forth in part 3 (b) of this chapter (chapter 30 of this title)."

History: En. Sec. 5-103, Ch. 197, L. 1965; amd. Sec. 2, Ch. 274, L. 1967.

Compiler's Note

Chapter 197, Laws 1965, the Highway Code, contained no sections 5-308 and 5-309 as referred to in paragraph (3) (a) of this section.

Amendments

The 1967 amendment added "In coun-

ties without a county surveyor" at the beginning of the first sentence of subsection (4), and added "chapter 30 of this title" within parentheses at the end of the section.

Effective Date

Section 3 of Ch. 274, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

32-2804. County contracts with state or federal agency. Whenever construction of farm to market, secondary, or feeder roads is to be

financed in whole or in part by federal funds, and the United States secretary of commerce shall affirmatively find that some method other than competitive bidding is in the public interest, each board may:

(1) Enter into and contract jointly or independently with either the commission, the bureau of public roads, or any other federal agency to:

(a) Acquire rights of way.

(b) Survey and construct such roads.

(c) Do any other thing essential and practical in securing such roads by force account, unit price, or otherwise.

History: En. Sec. 5-104, Ch. 197, L. 1965.

32-2805. Inspection of roads and construction work—compensation.

(1) The board may direct the county surveyor or some member or members of the board to inspect the condition of any road. It may direct such persons to inspect any work, being done under contract or otherwise, which is under the direction, supervision, or control of the board. Such inspections may be made before any work is commenced, during its progress, or after completion and before payment.

(2) The person or persons making such inspections shall receive the sum of twenty dollars (\$20) per day and actual expenses. The claims shall be audited and allowed in the same manner as other claims against the county.

(3) Proper minute entries of such inspections must be made by the surveyor or board member or members at the next regular meeting of the board.

History: En. Sec. 5-105, Ch. 197, L. 1965; amd. Sec. 1, Ch. 178, L. 1967.

ments to county surveyors and members of county boards of commissioners under subsection (2) from \$15 to \$20 per day.

Amendments

The 1967 amendment increased pay-

32-2806. Purchase of machinery and materials. (1) Out of the county road fund, each board may:

(a) Purchase and operate grading and other machinery necessary or desirable for the improvements of the county roads.

(b) Acquire deposits or quarries of suitable road-building material by purchase, condemnation, or lease.

(2) Each board may also acquire such road-building material by gift.

(3) Any crushed rock or gravel not directly used or needed by the county in the construction, repair, or maintenance of its roads, may be sold by the board at not less than actual cost of production to any person, firm, or corporation desiring to use it upon any public street or highway in the county. The proceeds of any such sale shall be paid into the county road fund.

History: En. Sec. 5-106, Ch. 197, L. 1965.

32-2807. Use of county road machinery. Each board may, in its discretion, authorize and permit the use of any county highway or road

machinery or equipment when not in use in any district, in connection with the construction, repair and maintenance of streets, avenues and alleys within any incorporated city or town of four thousand (4,000) population or less located in the county.

History: En. Sec. 5-107, Ch. 197, L. 1965.

32-2808. Width of road. (1) The width of all county roads, except bridges, alleys, or lanes, must be sixty (60) feet unless a greater or smaller width is ordered by the board on petition of an interested person.

(2) The width of all private highways and byroads, except bridges, must be at least twenty (20) feet.

(3) Nothing in this section shall be construed as increasing or decreasing the width of either kind of highway or road already established or used as such.

History: En. Sec. 5-108, Ch. 197, L. 1965.

Applicability

Statute was intended by legislature to

apply only to public roads which were laid out by official act of proper public officials and was never intended to apply to prescriptive easements. *State v. Portmann*, 149 M 91, 423 P 2d 56.

32-2809. Highways to follow subdivision or section lines. County roads must be laid out and opened when practicable upon subdivision or section lines. However, when public purposes shall be best served thereby, roads may be laid out in diagonal lines.

History: En. Sec. 5-109, Ch. 197, L. 1965.

32-2810. Auto passes excluding livestock. Where a county road connects with a state or federal highway which is fenced on both sides, the board may construct and maintain extensions of the fence across the right of way of the intersecting county road. The board shall construct a pass which will permit passage of vehicles but will prevent loose livestock from passing onto the state or federal highway. In the extensions of the fence, there shall be maintained a gate to permit the passage of livestock and vehicles.

History: En. Sec. 5-110, Ch. 197, L. 1965.

32-2811. Auto passes on county roads. Each board may construct on county roads passes which shall permit the travel of vehicles but which shall prevent the passage of loose livestock. Where necessary, gates shall be maintained to permit the passage of livestock. Such passes may be removed when, in the judgment of the board, the need therefor no longer exists.

History: En. Sec. 5-111, Ch. 197, L. 1965.

32-2812. Limit on amount expended in road district. The expenditures in any road district for labor and equipment, together with the compensation to be paid to the supervisor, shall not exceed the sum apportioned quarterly by the board to that district. However, if that sum is not sufficient, the board may appropriate any amount from the county road

fund necessary for the use of such district. The full amount of all road taxes collected in remote districts shall be expended annually by the county commissioners on the roads within such districts.

History: En. Sec. 5-112, Ch. 197, L. 1965.

32-2813. Reseeding of right of way areas. (1) Whenever the natural sod cover on right of way areas is disturbed by construction of county roads, irrigation ditches, drain ditches, or otherwise, the board shall require that such disturbed areas be seeded to an adaptable perennial grass or combination of perennial grasses and legumes. Every effort shall be made to establish a sod cover on the disturbed area.

(2) All seed used shall meet certified standards.

(3) Time and method of seeding, fertilizing practices, and grass species shall be those recommended by the Montana extension service.

History: En. Sec. 5-113, Ch. 197, L. 1965.

32-2814. County supervisors to control weeds and exterminate weed seeds—charges. The board of weed control and weed seed extermination supervisors shall control noxious weeds on the county roads. If the commission does not control noxious weeds on state and federal highways in any county, the supervisors shall control them. Upon presentation by the supervisors of a verified account of the expenses incurred, the costs thereof shall be paid by the commission.

History: En. Sec. 5-114, Ch. 197, L. 1965.

32-2815. Board and others to furnish information. The board and road supervisor of any county, and all other officers who may have the care and supervision of the public highways and bridges, shall, upon the written request of the commission, furnish all available information in connection with the construction and maintenance of the highways and bridges in their respective districts or counties.

History: En. Sec. 5-115, Ch. 197, L. 1965.

CHAPTER 29—BOARD OF COUNTY COMMISSIONERS RESPONSIBILITY FOR BRIDGES AND FERRIES

Section	32-2901.	County to maintain bridges.
	32-2902.	Bridges over streams in cities and towns.
	32-2903.	Election to determine question of construction—bonds—special levy.
	32-2904.	Removal of obstructions and repair of bridges.
	32-2905.	Bridges under control and management of board—police regulations.
	32-2906.	Construction and maintenance of bridges crossing county lines.
	32-2907.	Ferries uniting two counties—report of ferrymen on joint ferries.

32-2901. County to maintain bridges. Each board shall maintain all public bridges other than those maintained by the commission.

History: En. Sec. 5-201, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 2 of Chapter 5 of the Highway Code, entitled "Board of County Commissioners Responsibility for Bridges and Ferries."

32-2902. Bridges over streams in cities and towns. (1) Each board shall construct and maintain every bridge over a natural stream necessary to be constructed and maintained in any city or town.

(2) The city or town in which any such bridge is situated shall pay the whole or such part, not less than one-half ($\frac{1}{2}$), to be determined by the board, of the cost of planking, replanking, paving or repaving the bridge. The city or town shall construct and maintain in good repair the bridge approaches.

History: En. Sec. 5-202, Ch. 197, L. 1965.

32-2903. Election to determine question of construction—bonds—special levy. (1) Before undertaking the construction of any bridge the cost of which shall exceed ten thousand dollars (\$10,000), in any city or town, the board shall submit to the qualified electors of the county, at a general or special election, the question of whether the bridge shall be constructed and its cost paid by the county.

(2) If the electors vote in favor of construction, the board may issue and sell bonds of the county to the amount authorized for the construction of the bridge. Bonds shall be issued under such regulations as apply to other bonds of the county.

(3) The bridge shall be constructed using the proceeds of such sale.

(4) If the cost of the bridge does not exceed the amount authorized to be raised by a special tax, it may be levied as provided in section 7-104 [32-3604] of this code.

History: En. Sec. 5-203, Ch. 197, L. 1965.

32-2904. Removal of obstructions and repair of bridges. (1) Whenever any county road becomes obstructed, or any bridge needs repair or becomes dangerous for the passage of vehicles or persons, the board or the county surveyor, if he is in charge, shall remove the obstruction or repair the bridge, upon being notified thereof.

(2) Nothing in this section shall be construed as holding the board, or any member, responsible or liable for anything other than willful, intentional neglect or failure to act.

History: En. Sec. 5-204, Ch. 197, L. 1965.

32-2905. Bridges under control and management of board—police regulations. (1) The board shall manage and control all bridges referred to in this part [chapter]. It shall direct the method and time of making repairs, planking, replanking, paving and repaving.

(2) The board may also make repairs to stream beds and watercourses and the banks thereof when any bridge is in danger of being damaged or lost because of erosion or changes in the beds or banks.

(3) Such bridges and all persons on them shall be subject to the

reasonable police regulations of the city or town in which any such bridge is situated.

History: En. Sec. 5-205, Ch. 197, L. 1965.

32-2906. Construction and maintenance of bridges crossing county lines. Bridges crossing the line between counties shall be constructed and maintained by the counties into which the bridges reach. Each county shall pay such portion of the costs of construction and maintenance as shall have been previously agreed upon by the respective boards.

History: En. Sec. 5-206, Ch. 197, L. 1965.

32-2907. Ferries uniting two counties—report of ferrymen on joint ferries. (1) When a public ferry, if constructed would unite two counties, the boards may act jointly to construct, maintain, and operate it. Each county shall acquire and maintain its own landings and approaches.

(2) When ferrymen are employed on joint ferries, they shall report quarterly to each board, giving such information as each board may require.

History: En. Sec. 5-207, Ch. 197, L. 1965.

CHAPTER 30—COUNTY ROAD SUPERINTENDENT

- Section 32-3001. County road superintendent—appointment and compensation.
- 32-3002. Duties of county road superintendent.
- 32-3003. Accounts and statements.
- 32-3004. Examination of superintendent's report—warrant for claims.
- 32-3005. Equipment, tools, and implements for use of superintendent.
- 32-3006. Employment of laborers—hiring of equipment.
- 32-3007. Construction of drains and ditches—penalty for obstructions.

32-3001. County road superintendent—appointment and compensation. (1) After his appointment, the county road superintendent shall serve at the pleasure of, and under the direction and control of the board. He shall file with the county clerk the customary oath of office and a bond approved by the board for the faithful performance of his duties.

(2) He shall receive such compensation as is determined by the board.

History: En. Sec. 5-301, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 3 of Chapter 5 of the Highway Code, entitled "County Road Superintendent."

32-3002. Duties of county road superintendent. (1) Under the direction and supervision of the board, the superintendent shall furnish plans and specifications for highway or bridge work. He shall be chairman of all boards of road viewers.

(2) Under such direction and supervision, he shall also:

(a) Take charge of all roads, bridges and causeways under the jurisdiction of the county.

(b) Open all new roads when they are duly established and ordered to be opened by the board.

(c) Perform at the time and in the manner directed by the board whatever shall be lawfully directed by the board concerning the public highways under the jurisdiction of the county.

History: En. Sec. 5-302, Ch. 197, L. 1965.

32-3003. Accounts and statements. The superintendent shall keep correct accounts of all labor performed, equipment and implements used, and materials furnished. He shall give to each person performing work, or furnishing equipment, implements, or materials a certificate stating the work performed and the price to be paid therefor.

History: En. Sec. 5-303, Ch. 197, L. 1965.

32-3004. Examination of superintendent's report—warrant for claims. At the first monthly or quarterly meeting held after filing of the superintendent's report, the board shall examine it. Upon the presentation of any certificate issued by the superintendent, and verification of it by the holder, as in other cases of claims against the county, the board shall cause to be issued a warrant for the amount of the certificate drawn on the treasurer against the county road fund.

History: En. Sec. 5-304, Ch. 197, L. 1965.

32-3005. Equipment, tools, and implements for use of superintendent. Upon the requisition of the superintendent, the board shall furnish any equipment, tools, and implements necessary, and pay for them out of the county road fund. The superintendent shall preserve the equipment, tools, and implements, and shall not allow them to be used except on public highways. At the expiration of his term of office, or upon his removal therefrom, he must turn over all equipment, tools, and implements to his successor or to the board.

History: En. Sec. 5-305, Ch. 197, L. 1965.

32-3006. Employment of laborers—hiring of equipment. Whenever it is necessary, the superintendent may employ suitable laborers, hire equipment and implements, and contract as to the wages and prices to be paid. Wages and prices shall not exceed rates established by the board for an eight-hour day.

History: En. Sec. 5-306, Ch. 197, L. 1965.

32-3007. Construction of drains and ditches—penalty for obstructions. (1) The superintendent may open or construct drains and ditches for making and preserving roads and highways, doing as little injury as may be possible to the adjoining land.

(2) Any person who stops or obstructs any drain or ditch so constructed forfeits the sum of fifty dollars (\$50.00), to be recovered by the superintendent or board in a civil action in any court of competent jurisdiction.

(3) Any person aggrieved by the act of the superintendent may make a written complaint to the board, which if it finds the complaint valid, may pay damages out of the county road fund.

History: En. Sec. 5-307, Ch. 197, L. 1965.

CHAPTER 31—LOCAL IMPROVEMENT DISTRICTS

Section	32-3101.	Duty of board to construct roads and levy assessments.
	32-3102.	Petition for construction or improvement of road.
	32-3103.	Resolution of public interest.
	32-3104.	Proceedings upon receipt of petition.
	32-3105.	Proceedings at meeting.
	32-3106.	Duties of committee and road superintendent.
	32-3107.	Report of county road superintendent—order creating district.
	32-3108.	Sharing of costs—order of board.
	32-3109.	Payment of county's share of expense.
	32-3110.	Formation and boundaries of district.
	32-3111.	Assessment of lands in each part—lien.
	32-3112.	Method of assessment.
	32-3113.	Appointment of inspector—compensation of inspector and committee.
	32-3114.	Construction by county—lien.
	32-3115.	Apportionment of costs—assessment roll—contents.
	32-3116.	Notice—confirmation—errors.
	32-3117.	Correction of errors—lien.
	32-3118.	Modes of payment of assessment.
	32-3119.	Immediate payment—notice to landowners.
	32-3120.	Contents of notice.
	32-3121.	Installment payment procedure—county treasurer to collect.
	32-3122.	Board provides method of payment.
	32-3123.	Order for issuance of bonds—form and contents.
	32-3124.	Notice in case of payment by special bonds—contents.
	32-3125.	Payment of assessment—redemption by payment.
	32-3126.	Issuance of special bonds to contractor—sale of bonds.
	32-3127.	Payment of interest—retirement.
	32-3128.	Collection of assessments by suit of owner of bonds.
	32-3129.	Auditing and payment of claims and accounts.
	32-3130.	Estimates of work completed—payment therefor.
	32-3131.	Disposition of residue of funds.

32-3101. Duty of board to construct roads and levy assessments. (1) Upon proper petition, as hereinafter provided, the board shall cause county roads to be laid out, opened, constructed and improved.

(2) The board shall levy and cause to be collected an assessment upon all parcels of land specifically benefited by the laying out, opening, construction, or improvement for paying the costs thereof.

(3) The assessment shall be a first lien upon the land liable, prior and superior to all other liens and encumbrances.

(4) The board shall provide for the payment of assessments either on the immediate payment plan or by installments.

(5) The board shall issue local improvement district bonds and coupons for each installment.

History: En. Sec. 5-401, Ch. 197, L.
1965.

Compiler's Note

This chapter was designated as Part 4
of Chapter 5 of the Highway Code, en-
titled "Local Improvement Districts."

32-3102. Petition for construction or improvement of road. (1) A petition for laying out, opening, constructing, or improving a county road may be presented to the board by the owners of two-thirds ($2/3$) of the lineal feet of land fronting on the proposed or existing road.

(a) If any such land stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian shall be equivalent to the signature of the owner.

(2) The petition must set forth:

(a) That the petitioners are such owners and that they desire the petitioned action.

(b) The kind and nature of the improvement desired.

(c) The mode of payment of the assessments to be levied for defraying the cost thereof.

(d) The portion of the costs which the district, if formed, will assume and pay.

(i) It must not be less than thirty-five per cent (35%) of the costs, and may be as much as seventy-five per cent (75%) thereof.

History: En. Sec. 5-402, Ch. 197, L.
1965.

32-3103. Resolution of public interest. Upon receipt of the petition, the board shall pass a resolution that the public interest demands the laying out, opening, constructing or improving of the road, or part thereof, described in the resolution. The description shall not include any portion of any road within the boundaries of any city or incorporated town.

History: En. Sec. 5-403, Ch. 197, L.
1965.

32-3104. Proceedings upon receipt of petition. (1) After receipt of the petition and passage of the resolution, the board shall make an order fixing a time and place in the vicinity of the road for a meeting between the county road superintendent or his deputy and the petitioners and all owners upon whose lands special assessments will be levied.

(2) The county clerk shall immediately notify the county road superintendent of the meeting and shall cause a notice thereof to be printed in the newspaper published nearest to the vicinity of the road. The notice shall be published for three (3) consecutive weeks prior to the time of the meeting.

(3) The notice shall state the time and place of the meeting, and in general terms the kind of construction or improvement sought, and the places of beginning, intermediate points and termination.

History: En. Sec. 5-404, Ch. 197, L.
1965.

32-3105. Proceedings at meeting. (1) The petitioners and all owners of land fronting on the road or land owned within two miles on either side of it upon which special assessments will be levied may meet with the superintendent or his duly appointed deputy.

(2) The superintendent or his deputy, or, in their absence one of the landowners present, shall preside. Those present shall elect three as a committee of supervisors; at least one of them shall be a petitioner.

(a) A majority of the owners present and voting shall be sufficient for election. The presiding officer shall certify to the board the names of the owners elected to the committee.

(3) Those elected shall qualify immediately by taking an oath that they are owners of land benefited by the improvements and to be included within the local assessment district. They shall take an oath that they will fully, impartially, and faithfully perform their duties as supervisors.

(4) The superintendent or his deputy may administer the oath, or it may be administered by anyone so authorized by law.

History: En. Sec. 5-405, Ch. 197, L. 1965.

32-3106. Duties of committee and road superintendent. (1) The committee and the surveyor or his deputy shall:

(a) Immediately view, examine, and survey the road petitioned for.

(b) Examine and determine the lands which will be specifically benefited by the road and which should be included within the district that is to be assessed.

(c) Ascertain whether any damage or injury to property will be sustained by or in consequence of the making of the road.

(d) Obtain, if possible, without cost the release in writing of each person of his claim for such damage or injury.

(e) Arrange, when necessary, for a release to be given for such amount as may be fair and reasonable.

(2) The road superintendent shall without delay prepare plans and specifications and cost estimates. He shall prepare a plat and description of the local assessment district and a description of the parcels of land included in the district. The valuation of the lands shall be that which appears on the last annual assessment roll of the county for the levying of general taxes.

History: En. Sec. 5-406, Ch. 197, L. 1965.

32-3107. Report of county road superintendent—order creating district. (1) At the next annual meeting of the board after the road superintendent has completed surveying the road and making estimates, he shall make a detailed report.

(a) The report shall state that the maps, descriptions, plans, specifications, and details and estimates of damages, costs, and expenses have been completed.

(2) The whole amount of damages, costs and expenses shall not exceed fifty per cent (50%) of the total assessed valuation of the parcels of land in the district, as determined from the last annual assessment roll of the county. If it does not, the board shall make and enter upon the report an order that the road be made.

(3) That order shall create the local improvement district to be known and designated as local improvement district No. ——— in ——— county, Montana. Copies of the report shall be kept in the offices of the board and road superintendent.

History: En. Sec. 5-407, Ch. 197, L. 1965.

32-3108. Sharing of costs—order of board. The board may enter an agreement to share costs with the district when the petition presented states the proportion which the district will pay. After such an agreement has been made, specifying the amount to be paid by the district and the amount to be paid from county funds, the board shall make an order to that effect on the records of its proceedings.

History: En. Sec. 5-408, Ch. 197, L. 1965.

32-3109. Payment of county's share of expense. The board shall order paid from county funds the share of the county for construction or improvement of the road. However, payment shall not exceed sixty-five per cent (65%) of the cost. This amount shall be a proper charge against the county and shall be paid by the treasurer upon warrants duly drawn as ordered by the board.

History: En. Sec. 5-409, Ch. 197, L. 1965.

32-3110. Formation and boundaries of district. (1) The boundaries of each local assessment district shall be fixed as follows:

(a) The lands extending from the center of the road one-half ($\frac{1}{2}$) mile on each side thereof [measuring one (1) mile in width] shall constitute "Part One" of the district.

(b) The lands embraced within an area one (1) mile wide on each side of Part One shall constitute "Part Two" of the district.

(c) The lands embraced within an area one (1) mile wide on either side of Part Two shall constitute "Part Three" of the district.

(2) Each of the parts shall extend the full length of the proposed road and one mile beyond the terminus unless the committee shall otherwise provide.

History: En. Sec. 5-410, Ch. 197, L. 1965.

32-3111. Assessment of lands in each part—lien. (1) Each separate parcel of land in Part One shall be assessed for its proportion of forty-five per cent (45%) of the whole cost payable by the district.

(2) Each separate parcel of land in Part Two shall be assessed for its proportion of thirty-five per cent (35%) of the cost.

(3) Each separate parcel of land in Part Three shall be assessed for its proportion of twenty per cent (20%) of the cost.

(4) All of the lands in each part shall be subject to a lien for all of the assessments of that part until they have been paid.

History: En. Sec. 5-411, Ch. 197, L. 1965.

32-3112. Method of assessment. (1) The assessments upon the parcels of land in each part shall be made ratably according to the front-foot plan, as follows:

(a) The unit used to determine the proportion of assessment shall be one foot of longitude measured along the road constituting the center of the district and extending latitudinally across the part.

(b) Because units in each part may not be equal, assessment rates for each part shall be determined for eight hundred eighty (880) square feet of surface.

(2) If the areas of the parts are not equal, the rates fixed for parts one, two, and three shall be related to each other as are the numbers forty-five (45), thirty-five (35) and twenty (20), respectively.

History: En. Sec. 5-412, Ch. 197, L. 1965.

32-3113. Appointment of inspector—compensation of inspector and committee. (1) The committee and road superintendent together shall appoint some suitable and competent person other than they to act as an inspector of the work. He shall be upon the work at all times during its progress and inspect the performance thereof. He shall report to and be under the supervision of the superintendent.

(2) He shall be paid for his services as inspector at the rate of five dollars (\$5) per day for the time he is actually engaged thereon.

(3) Each supervisor shall be paid the sum of three dollars (\$3) per day for the time the committee is actually engaged in meeting and acting with the superintendent and in transacting the business of the district. No mileage or other expense money shall be paid.

History: En. Sec. 5-413, Ch. 197, L. 1965.

32-3114. Construction by county—lien. (1) If bids for construction and improvement are rejected by the committee, the district may contract with the board to construct or improve the road.

(2) Roads in districts may be constructed and improved in the first instance at the entire expense of the county, and the county may, as far as practicable, take the place of a private contractor.

(3) When the county has paid for construction and improvements, it shall be recompensed for by the district in accordance with their agreement. If bonds were issued under the installment plan, they shall become the property of the county.

(4) The county shall have the same lien as if the contract had been let to a private contractor.

History: En. Sec. 5-414, Ch. 197, L. 1965.

32-3115. Apportionment of costs—assessment roll—contents. (1) When the order for improvement and construction has been made by the board, the committee and the county assessor shall apportion the estimated cost and expenses to the land in the district.

(2) Within thirty (30) days before the letting of the contract, the assessor shall report to and file with the board and the treasurer an assessment roll in duplicate. It shall contain the description of each parcel of land to be assessed, the amount to be assessed against it, and the name of the owner, if known. In no case shall a mistake in the name of the owner be fatal to the assessment when the description of the land is correct.

History: En. Sec. 5-415, Ch. 197, L. 1965.

32-3116. Notice—confirmation—errors. (1) As soon as the assessment roll is reported and filed, the board shall publish notice for three consecutive weeks in the newspapers in which notice of invitations for bids for the contract was published. The notice shall notify all persons interested that the assessment roll has been filed, and require them to appear at the office of the board at the county seat at a time not less than fifteen (15) days from the date of the last publication of the notice to make objections.

(2) At the time fixed, the board and the assessor shall meet. If no objections have been filed, the board shall make an order confirming the assessment roll. If written objections, properly verified, have been filed, the board shall hear the objections, receiving any testimony from any party involved.

History: En. Sec. 5-416, Ch. 197, L. 1965.

32-3117. Correction of errors—lien. (1) After the hearing, the board shall make such corrections as appear just to apportion the assessment to the benefit to be received. It shall then make and enter an order approving and certifying the assessment roll.

(2) With the aid of the assessor, the board shall levy and assess the amounts on the assessment roll against the parcels of land, or parts thereof.

(3) The assessment so made shall be a first lien on the land described in the assessment roll.

History: En. Sec. 5-417, Ch. 197, L. 1965.

32-3118. Modes of payment of assessment. The petition shall state whether the landowners want to make payment by the mode of "im-

mediate payment" or by payments in installments. Installment payments shall be made in six equal portions, in one (1), two (2), three (3), four (4), five (5), and six (6) years. Payments shall be in the form of bonds which shall draw six per cent (6%) interest per annum from the date they are issued until they are paid.

History: En. Sec. 5-418, Ch. 197, L. 1965.

32-3119. Immediate payment—notice to landowners. (1) If immediate payment is chosen, the board shall deliver the assessment roll to the county clerk as soon as it has been proved and certified. The clerk shall file a duplicate in his office and immediately deliver the other to the treasurer.

(2) The treasurer shall publish a notice for two consecutive weeks in the newspapers in which the notice for bids was advertised and shall mail a copy of the notice to the owners of the land assessed, when the name and post-office address of the owner are known.

(a) Failure to mail notice shall not be fatal to the assessment when it has been published.

History: En. Sec. 5-419, Ch. 197, L. 1965.

32-3120. Contents of notice. The notice shall state the following: (1) The assessment roll has been certified to the treasurer for collection.

(2) Unless payment is made within thirty (30) days from the date of the notice, the payment will become delinquent and shall bear interest at the rate of ten per cent (10 %) per annum.

(3) If the assessment is not paid before it becomes delinquent, a penalty of five per cent (5 %) shall be added, as well as the interest on the annual tax roll for the current year.

(4) The interest and penalty shall be collected, together with such additional charges as are authorized to be charged and collected on other delinquent taxes.

(5) The land assessed shall be sold for the amount of the assessment with interest, penalty, and costs, in the manner and with the same authority as lands are sold for general taxes.

History: En. Sec. 5-420, Ch. 197, L. 1965.

32-3121. Installment payment procedure—county treasurer to collect. (1) If the mode of payment is to be by installments, the board and the committee shall approve and certify the assessment roll.

(2) The board and the assessor shall, at the time of levying the assessment, in their order setting the levy, declare that the sum charged against each parcel of land may be paid in equal annual installments with interest upon the whole sum at the rate of six per cent (6%) per annum. The order shall specify the number of installments which shall be equal to the number of years for which the bonds may run.

(3) Each year thereafter, the treasurer shall collect one of the installments together with the interest due thereon and the interest due on the installments thereafter to become due.

(4) Provisions concerning delinquency and the sale of land set forth with relation to the mode of immediate payment shall be likewise applicable to installment payments.

History: En. Sec. 5-421, Ch. 197, L. 1965.

32-3122. Board provides method of payment. When improvement is ordered upon a petition specifying the method of payment of bonds, the board shall provide that the payment of costs and expenses be made under the provisions of this part [chapter] by bonds charged against the lands in the district. The bonds may be issued to the contractors in payment or costs may be paid by the proceeds of the bonds to be issued and sold as hereinafter provided. In all other cases, the board may so provide.

History: En. Sec. 5-422, Ch. 197, L. 1965.

32-3123. Order for issuance of bonds—form and contents. (1) The board shall make and enter an order authorizing and directing the issuance of bonds payable not more than ten years after the date of issuance.

(2) Each bond shall provide that the holder shall not demand payment until it comes due. It shall bear interest at the rate of six per cent (6%) per annum, payable annually, and shall have interest coupons for each interest payment attached.

(3) Each bond and coupon shall bear the date of issuance and be made payable to bearer. Each bond shall be signed by the chairman of the board and attested by the county clerk. The seal of the board shall be affixed to each bond.

(4) Bonds shall be issued in denominations of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000).

(5) Each bond shall contain a reference to the district for which it is issued and to the order and record authorizing the issue. It shall state that it is payable only out of the local improvement funds, created by special assessment, and not otherwise.

(6) On its face, each bond shall bear the designation of the district: "Local Improvement District No. _____ in _____ county, Montana."

(7) No bond shall be issued in excess of the costs and expenses of the improvements and construction.

History: En. Sec. 5-423, Ch. 197, L. 1965.

32-3124. Notice in case of payment by special bonds—contents. (1) If the board provides that payment of costs shall be made by the issuance of bonds, the treasurer shall publish notice for two consecutive weeks and mail a copy of the notice in the same manner as is provided with relation to immediate payment.

(2) The notice shall state that:

(a) The assessment roll has been certified to the treasurer for collection.

(b) Unless payment of the whole amount of the assessment is made within thirty (30) days from the date of the notice, special bonds shall be issued against the lands in the district for the payment of the assessment.

(c) If bonds are issued, they will be payable in annual installments with interest thereon at the rate provided in the bonds.

History: En. Sec. 5-424, Ch. 197, L.
1965.

32-3125. Payment of assessment—redemption by payment. (1) At any time within thirty (30) days after notice, the owner may pay the assessment and release and discharge his lands therefrom and from the operation and effect of the bonds.

(2) No bonds shall be issued until twenty (20) days after the expiration of thirty (30) days after notice. No bonds shall be issued for any assessment paid in full within the thirty (30) days.

(3) The owner of lands may redeem them from all liability for assessment at any time after the thirty (30) days by paying all of the assessment remaining unpaid, together with interest and all charges thereon to the date of maturity of the installment next falling due.

(4) All payments shall be made to the treasurer, who shall apply them solely to the costs of the improvement or construction.

History: En. Sec. 5-425, Ch. 197, L.
1965.

32-3126. Issuance of special bonds to contractor—sale of bonds. Bonds ordered sold by the board may be issued to the contractor constructing the improvement in payment. The board may also direct, in the order providing for issuance of the bonds, that they be sold by the treasurer at not less than par value and accrued interest. The proceeds of such bonds shall be applied in payment of the costs and expenses of the improvement.

History: En. Sec. 5-426, Ch. 197, L.
1965.

32-3127. Payment of interest—retirement. (1) The treasurer shall pay the interest on the bonds out of the funds of the district collected on assessments for the bonds.

(2) Whenever there is money in the fund against which the bonds have been issued over and above the amount sufficient for the payment of interest on all unpaid bonds, it shall be used to pay the principal on one or more of the bonds. The treasurer shall call in and pay the bonds in their numerical order.

(3) The call shall be published in the county official newspaper on the day following the maturity date of the installment of assessment, or as soon thereafter as practicable. It shall state that special bonds No.

----- (giving the serial number or numbers of the bonds called) of the district will be paid on the day the next interest coupons become due. Interest upon the bonds thus called shall cease upon that date.

History: En. Sec. 5-427, Ch. 197, L. 1965.

32-3128. Collection of assessments by suit of owner of bonds. (1) If the treasurer fails, neglects, or refuses to pay bonds or to collect promptly any assessments when due, the owner of any bonds may proceed in his own name to collect the assessments and to foreclose the lien in any court of competent jurisdiction. In addition to the amount of the assessments and interest thereon, any such owner shall recover five per cent (5 %) and the costs of his suit.

(2) Any number of holders of bonds for any single district may join as plaintiffs, and any number of owners of land on which the bonds are a lien may be joined as defendants.

(3) Neither the holder nor any owner of any bond shall have any claim against the county through which the bond is issued except for the assessment. His remedy in case of nonpayment shall be confined to the enforcement of the assessments.

(4) A copy of this section shall be plainly written, printed, or engraved on each bond.

History: En. Sec. 5-428, Ch. 197, L. 1965.

32-3129. Auditing and payment of claims and accounts. (1) The committee shall approve and certify all claims and accounts for services and every kind of expense payable from funds of the district.

(2) The county auditor, or the county clerk in any county which has no auditor shall then audit all such claims and accounts. Thereafter he shall issue to the treasurer an order in favor of the person to whom the claim or account is payable to pay it.

(3) Upon presentation of the order by the person to whom it was issued, or his assignee, the treasurer shall pay it from the funds of the district.

History: En. Sec. 5-429, Ch. 197, L. 1965.

32-3130. Estimates of work completed—payment therefor. (1) The surveyor with the approval of the committee shall make estimates of the proportion of the work completed. After auditing, the estimates may be paid by the treasurer to an amount not exceeding eighty per cent (80 %) during the progress of the work.

(2) If the assessment is payable by installments, the treasurer shall pay the order only from such assessments as shall have been collected prior to the issue of the bonds and from the proceeds of the sales of the bonds after issue.

(3) If the board has ordered that the contractor shall receive bonds in payment, the order for payment shall call for bonds instead of money.

The treasurer shall deliver the bonds, dating them the day he delivers them to the contractor. Interest shall run therefrom.

(4) Amounts collected on installment payments of assessments shall be reserved and disbursed by the treasurer for the payment of principal and interest and for the redemption of such bonds.

History: En. Sec. 5-430, Ch. 197, L. 1965.

32-3131. Disposition of residue of funds. (1) After the payment of the whole cost of construction or improvement, any money remaining in the county treasury which belongs to the district shall be refunded on demand. A rebate therefrom shall be made on demand to any person who shall not have paid his assessment in full.

(2) Demand shall be made within two (2) years from the date upon which the assessment became due.

(3) Any such money remaining in the county treasury after the expiration of two years for which no demand has been made shall go into the general funds.

History: En. Sec. 5-431, Ch. 197, L. 1965.

CHAPTER 32—STATE VEHICLE FEES—PAYMENT, EXPIRATION AND DISPOSITION

- Section 32-3201. Time for payment of fees.
 32-3202. Expiration date.
 32-3203. License is transferable.
 32-3204. Disposition of fees collected by county treasurer.
 32-3205. Deposit of state highway moneys.
 32-3206. Additional tax by municipalities prohibited—exceptions.

32-3201. Time for payment of fees. A person who owns or operates a vehicle subject to the fees provided in chapter 197, sections 6-201, 6-202, 6-203, 6-204, 6-205, 6-206, 6-207, 6-208, and 6-210 [32-3301 to 32-3308, 32-3310] and acts amendatory thereto shall pay the fees provided in this chapter.

Prior to or at the time of registration of such vehicle as required under Title 53, Revised Codes of Montana, 1947, and acts amendatory thereto, or prior to the operation of such vehicle on the public highways, fees paid shall be the full amount provided in this chapter unless otherwise provided by law.

A person who makes application for license after the first day of July of any year shall pay one-half ($\frac{1}{2}$) of those fees.

History: En. Sec. 6-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 292, L. 1967.

Chapter 6, entitled "Fees: Time for Payment, Expiration, Disposition."

Compiler's Note

Chapters 32 to 35, inclusive, of this title were designated as Chapter 6 of the Highway Code, entitled "State Finance." This chapter was designated as Part 1 of

Amendments

The 1967 amendment rewrote this section. Prior to amendment, it read, "A person who owns a motor truck, truck-tractor, trailer, semitrailer, bus, or new

passenger motor vehicle and operates it upon the highways of the state shall, at the time he makes application for license as provided in section 53-114, pay any additional fees prescribed in this chapter.

A person who makes application for license after the first day of July of any year shall pay one-half ($\frac{1}{2}$) of those fees."

32-3202. Expiration date. The fees paid hereunder for every motor truck, truck-tractor, trailer, semitrailer, bus or automobile shall expire on December 31 of each year. Any certificate, registration, or license issued shall be valid only for the period for which issued.

History: En. Sec. 6-102, Ch. 197, L. 1965.

32-3203. License is transferable. The certificate, registration or license issued hereunder is transferable by the licensee to another truck, truck-tractor, trailer, semitrailer, low-boy trailer, pole trailer, housetrailer, or passenger car upon transfer of ownership of such truck, truck-tractor, trailer, semitrailer, low-boy trailer, pole trailer, housetrailer, or passenger car to a replacement vehicle of the same type. If a smaller vehicle is purchased, there shall be no refund.

History: En. Sec. 6-103, Ch. 197, L. 1965; amd. Sec. 4, Ch. 127, L. 1969.

Amendments

The 1969 amendment substituted "by the licensee * * * of the same type" for "only upon transfer of title or interest of

the legal owner" at the end of the first sentence and deleted second and third sentences reading: "It is not transferable to another vehicle. However, if a vehicle is destroyed from any cause, the commission may permit transfer to a replacement vehicle."

32-3204. Disposition of fees collected by county treasurer. At the time of collecting the fees provided for in section 32-3201, R.C.M. 1947, each county treasurer shall retain five per cent (5%) of the fees collected by the county treasurer for the cost of administration, and for deposit in the general fund of the county. The remaining ninety-five per cent (95%) shall be remitted monthly to the state treasurer for deposit to the credit of the commission. Such remittance shall be made on forms furnished to the county treasurer by the commission.

History: En. Sec. 6-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 293, L. 1967.

Amendments

The 1967 amendment rewrote the first sentence of this section. Prior to amendment, it read, "At the time of collecting the fees hereinafter provided for, each county treasurer shall retain five per cent (5%) of the fees so collected for the cost of administration."

Separability Clause

Section 2 of Ch. 293, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

32-3205. Deposit of state highway moneys. (1) Any reference to the state highway fund shall be taken to mean the state highway account in the earmarked revenue fund.

(2) All moneys received for the use of the commission from the receipt or transfer of motor vehicle license fees, as provided by law, or from other state sources shall be deposited in the earmarked revenue fund to the credit of the commission.

(3) All moneys received from the counties and from the federal government or other agencies shall be deposited in the federal and private revenue fund to the credit of the commission.

(4) Hereafter, all moneys collected for the commission as authorized by law shall be credited to such fund or funds by the state treasurer.

History: En. Sec. 6-105, Ch. 197, L. 1965.

32-3206. Additional tax by municipalities prohibited—exceptions. Municipalities shall not levy, assess, collect, or charge any additional tax upon any carrier of persons or property for hire, except as provided by law. However, no carrier shall be exempt hereby from paying a parking, curb or ad valorem property tax levied by any municipality.

History: En. Sec. 6-106, Ch. 197, L. 1965.

CHAPTER 33—ADDITIONAL TRUCK, TRAILER AND BUS FEES—SALES TAX ON VEHICLES—EXCESS WEIGHT PENALTIES

- Section 32-3301. Additional fees on motor trucks and truck-tractors.
 32-3302. Additional fees on trailers and semitrailers.
 32-3302.1. Alternative additional fees on truck-trailer combinations.
 32-3303. Additional fees—gross weight over 42,000 pounds.
 32-3304. Additional fees—pole trailers, low-boys, and livestock.
 32-3304.1. Additional fees—haulers of ready-mix concrete.
 32-3305. Additional fees—house trailers.
 32-3306. Additional fees—certain farm vehicles.
 32-3307. Additional fees—buses.
 32-3308. Additional fees—quarterly payment.
 32-3309. Failure to pay additional fees—penalty.
 32-3310. Three unit combination—fees in lieu of gross weight fees otherwise provided—marking.
 32-3311. Truck, truck-tractor or bus marked with weight or capacity—markings on farm, logging, livestock, ready-mix concrete, equipment or special vehicles.
 32-3312. Additional fees on motor trucks, truck-tractors, trailers and semitrailers from other states.
 32-3313. Temporary trip permits showing payment of fees—display.
 32-3314. Time for payment of fees by nonresidents.
 32-3315. Sales tax on new motor vehicles.
 32-3316. Violation—penalty.
 32-3317. Excess weight—penalties.

32-3301. Additional fees on motor trucks and truck-tractors. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each motor truck and truck-tractor, based upon the maximum gross loaded weight thereof as set by the licensee in his application, the following fees:

Schedule I

Up to 6,000 lbs. -----	\$ 7.50
6,001 lbs. or more, and less than 8,000 lbs. -----	12.50
8,001 lbs. or more, and less than 10,000 lbs. -----	17.50
10,001 lbs. or more, and less than 12,000 lbs. -----	20.00
12,001 lbs. or more, and less than 14,000 lbs. -----	22.50
14,001 lbs. or more, and less than 16,000 lbs. -----	27.50
16,001 lbs. or more, and less than 18,000 lbs. -----	37.50

18,001 lbs. or more, and less than 20,000 lbs.	50.00
20,001 lbs. or more, and less than 22,000 lbs.	62.50
22,001 lbs. or more, and less than 24,000 lbs.	93.75
24,001 lbs. or more, and less than 26,000 lbs.	125.00
26,001 lbs. or more, and less than 28,000 lbs.	156.25
28,001 lbs. or more, and less than 30,000 lbs.	206.25
30,001 lbs. or more, and less than 32,000 lbs.	262.50
32,001 lbs. or more, and less than 34,000 lbs.	318.75
34,001 lbs. or more, and less than 36,000 lbs.	375.00
36,001 lbs. or more, and less than 38,000 lbs.	431.25
38,001 lbs. or more, and less than 40,000 lbs.	487.50
40,001 lbs. or more, and less than 42,000 lbs.	543.75

History: En. Sec. 6-201, Ch. 197, L. 1965; amd. Sec. 2, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment increased the fees under this section where applicable from \$6 to \$7.50; 10 to 12.50; 14 to 17.50; 16 to 20.00; 18 to 22.50; 22 to 27.50; 30 to 37.50; 40 to 50.00; 50 to 62.50; 75 to 93.75; 100 to 125.00; 125 to 156.25; 165 to 206.25; 210 to 262.50; 255 to 318.75; 300 to 375.00; 345 to 431.25; 390 to 487.50; and 435 to 543.75.

Compiler's Note

This chapter was designated as Part 2 of Chapter 6 of the Highway Code, entitled "Additional Fees, Sales Tax, and Penalty."

32-3302. Additional fees on trailers and semitrailers. In addition to other fees for the licensing of vehicles there shall be paid and collected annually for each trailer and semitrailer, based upon the maximum gross loaded weight thereof as set by the licensee in his application, except as otherwise provided, the following fees:

Schedule II

Trailers Other Than House Trailers.

Up to 2,500 lbs. for personal use—Exempt	
Up to 2,500 lbs. for commercial use	\$3.75
2,501 lbs. or more, and less than 6,000 lbs.	5.00
6,001 lbs. or more, and less than 8,000 lbs.	15.00
8,001 lbs. or more, and less than 10,000 lbs.	17.50
10,001 lbs. or more, and less than 12,000 lbs.	20.00
12,001 lbs. or more, and less than 14,000 lbs.	22.50
14,001 lbs. or more, and less than 16,000 lbs.	27.50
16,001 lbs. or more, and less than 18,000 lbs.	37.50
18,001 lbs. or more, and less than 20,000 lbs.	50.00
20,001 lbs. or more, and less than 22,000 lbs.	62.50
22,001 lbs. or more, and less than 24,000 lbs.	93.75
24,001 lbs. or more, and less than 26,000 lbs.	125.00
26,001 lbs. or more, and less than 28,000 lbs.	156.25
28,001 lbs. or more, and less than 30,000 lbs.	206.25
30,001 lbs. or more, and less than 32,000 lbs.	262.50
32,001 lbs. or more, and less than 34,000 lbs.	318.75
34,001 lbs. or more, and less than 36,000 lbs.	375.00
36,001 lbs. or more, and less than 38,000 lbs.	431.25

38,001 lbs. or more, and less than 40,000 lbs. -----	487.50
40,001 lbs. or more, and less than 42,000 lbs. -----	543.75

History: En. Sec. 6-202, Ch. 197, L. 1965; amd. Sec. 3, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment increased the fees under this section where applicable from 3 to 3.75; 4 to 5.00; 12 to 15.00; 14 to 17.50; 16 to 20.00; 18 to 22.50; 22 to 27.50; 30 to 37.50; 40 to 50.00; 50 to 62.50; 75 to 93.75; 100 to 125.00; 125 to 156.25; 165 to 206.25; 210 to 262.50; 255 to 318.75; 300 to 375.00; 345 to 431.25; 390 to 487.50; and 435 to 543.75.

32-3302.1. Alternative additional fees on truck-trailer combinations.

In addition to other fees for the licensing of vehicles, there may be paid and collected annually instead of the fees provided in section 32-3301, R.C.M. 1947, enacted as section 6-201, Laws of 1965, for each motor truck or truck-tractor, based upon the maximum combined gross loaded weight of a truck-tractor with a semitrailer, a truck-tractor with a semitrailer and a full trailer, a motor truck and a trailer, or a motor truck and trailers, as set by the licensee in his application, the following fees:

Schedule III

Truck-tractor with a semitrailer, a truck-tractor with a semitrailer and a full trailer, a motor truck and a trailer, or a motor truck and trailers:

Up to 42,000 lbs. -----	\$ 571.00
42,001 to 44,000 lbs. -----	631.00
44,001 to 46,000 lbs. -----	691.00
46,001 to 48,000 lbs. -----	752.00
48,001 to 50,000 lbs. -----	812.00
50,001 to 52,000 lbs. -----	871.00
52,001 to 54,000 lbs. -----	931.00
54,001 to 56,000 lbs. -----	992.00
56,001 to 58,000 lbs. -----	1,052.00
58,001 to 60,000 lbs. -----	1,112.00
60,001 to 62,000 lbs. -----	1,172.00
62,001 to 64,000 lbs. -----	1,233.00
64,001 to 66,000 lbs. -----	1,293.00
66,001 to 68,000 lbs. -----	1,352.00
68,001 to 70,000 lbs. -----	1,412.00
70,001 to 72,000 lbs. -----	1,473.00
72,001 to 74,000 lbs. -----	1,533.00
74,001 to 76,000 lbs. -----	1,593.00
76,001 to 78,000 lbs. -----	1,653.00
78,001 and over -----	65.50 per ton or fraction thereof.

Payment of the fees provided in this section shall exempt any semitrailer or trailer in combination with a motor truck or truck-tractor so licensed from the fees provided in sections 32-3302, 32-3310 and 32-3312.

History: En. Sec. 7, Ch. 2, Ex. L. 1967.

Title of Act
An act amending section 32-1123, R. C. M. 1947, relating to maximum dimensions, weights and other characteristics

and factors of vehicles, providing that limitations shall not exceed those for the federal interstate highway system until federal law permits states to exceed same; amending sections 32-3301, 32-3302, 32-3303, 32-3305 and 32-3306, R. C. M. 1947, enacted as sections 6-201, 6-202, 6-203 and 6-205, chapter 197, Laws of 1965, relating to additional fees on motor trucks, truck-tractors, trailers, semitrailers and house trailers and increasing the fees; providing that additional fees

for each motor truck or truck-tractor, based upon maximum gross loaded weight of combinations with trailers and semitrailers, may be paid instead of additional fees provided for in sections 32-3301 and 32-3302, R. C. M. 1947, and allowing for exemptions; and providing an effective date.

Effective Date

Section 8 of Ch. 2, Ex. Laws 1967 read "This act is effective January 1, 1968."

32-3303. Additional fees—gross weight over 42,000 pounds. In addition to the fees provided for in sections 32-3301 and 32-3302, for each motor truck, truck-tractor, trailer, or semitrailer having a gross loaded weight in excess of forty-two thousand (42,000) pounds and within the weight limits specified in section 32-1123, there shall be paid and collected annually a fee of sixty-two dollars and fifty cents (\$62.50) for each two thousand (2,000) pounds, or fraction thereof.

History: En. Sec. 6-203, Ch. 197, L. 1965; amd. Sec. 4, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment substituted "32-

3301 and 32-3302" for "6-201 and 6-202"; and increased the annual fee paid under this section from \$50 to \$62.50.

32-3304. Additional fees—pole trailers, low-boys, and livestock. There shall be paid and collected annually a fee equal to seventy-five per cent (75%) of the fees provided in Schedule I and Schedule II above on pole trailers; trucks, truck-tractors, trailers and semitrailers used exclusively in hauling livestock and logs; truck-tractors and low-boy trailers used exclusively in hauling equipment; and truck-tractors drawing or hauling said low-boy trailers.

History: En. Sec. 6-204, Ch. 197, L. 1965; amd. Sec. 1, Ch. 187, L. 1969.

Amendments

The 1969 amendment deleted reference to equipment used in hauling ready-mix concrete.

32-3304.1. Additional fees—haulers of ready-mix concrete. There shall be paid and collected annually a fee equal to fifty-five per cent (55%) of the fees provided in Schedule I and Schedule II above on trucks, truck-tractors, trailers and semitrailers used exclusively in hauling read-mix concrete.

History: En. 32-3304.1 by Sec. 2, Ch. 187, L. 1969.

Title of Act

An act to amend section 32-3304, R. C. M. 1947, as amended by chapter 197, Laws of 1965, by striking therefrom reference to equipment used in hauling ready-mix concrete; and providing for a new section

to be numbered 32-3304.1, providing for the annual payment and collection on trucks, truck-tractors, trailers and semitrailers used exclusively in hauling ready-mix concrete of a fee equal to fifty-five per cent (55%) of the fees provided in Schedules I and II contained in sections 32-3301 and 32-3302.

32-3305. Additional fees—house trailers. In addition to other fees for the licensing of vehicles, there shall be paid and collected annually for each house trailer, based upon over-all length of body as set by the

licensee in his application, except as otherwise provided, a fee equal to seventy-five cents (\$.75) for each foot of over-all trailer body length exclusive of bumpers and hitch.

History: En. Sec. 6-205, Ch. 197, L. 1965; amd. Sec. 5, Ch. 2, Ex. L. 1967.

Amendments

The 1967 amendment increased the fee under this section from 50¢ to 75¢.

32-3306. Additional fees—certain farm vehicles. Except for motor trucks owned and operated by co-operative associations or co-operative marketing associations, there shall be paid and collected annually a fee equal to sixteen per cent (16%) of the fees provided in Schedule I and Schedule II above on motor trucks, trailers and semitrailers, owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard or dairy, or of supplies or commodities to be used on the farm, orchard or dairy, and on one truck tractor and lowboy trailer used by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture. However, the minimum fee so paid shall be six dollars (\$6). The terms "trailers and semitrailers" as used herein shall not include farm wagons.

History: En. Sec. 6-206, Ch. 197, L. 1965; amd. Sec. 1, Ch. 143, L. 1967; amd. Sec. 6, Ch. 2, Ex. L. 1967.

Amendments

Chapter 143, Laws of 1967, inserted "and on one truck tractor * * * in direct benefit to agriculture" after "orchard or dairy"; and increased the minimum fee to be paid by farm vehicles from \$4 to \$6.

Chapter 2 (Ex. Sess.), Laws of 1967, decreased the percentage of the fee equal to fees provided in Schedule I under this section from 20 to 16 per cent; and increased the minimum fee from \$4 to \$6.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 143 and once by Ch. 2 (Ex. Sess.). Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendment made by both 1967 acts.

32-3307. Additional fees—buses. There shall be paid and collected annually for each bus or auto stage with the exception of school buses a fee of seven dollars (\$7) per seat, exclusive of the first seven (7) seats and the operator, for the maximum adult seating capacity thereof, except that motor vehicles which are regularly used to haul freight and passengers shall be taxed upon the basis of the gross weight schedule established in section 6-201 [32-3301]. School buses shall not be exempt if they enter charter service.

History: En. Sec. 6-207, Ch. 197, L. 1965.

32-3308. Additional fees—quarterly payment. When the gross weight of any vehicle exceeds twenty-four thousand (24,000) pounds, the additional fees for motor trucks, trailers, tractors, pole trailers, or semitrailers may be purchased for a three months' period for one-fourth (1/4) the

regular fee at the beginning of any quarter of the calendar year. For each fee so paid other than at the time of payment of the basic license fee, an additional fee of one dollar (\$1) shall be charged. The commission is authorized to establish rules and regulations relative to the issuance and display of certificates or insignia, which shall state the quarters for which the vehicle is licensed.

History: En. Sec. 6-208, Ch. 197, L. 1965.

32-3309. Failure to pay additional fees—penalty. No vehicle licensed under the provisions of section 6-208 [32-3308] shall be operated over the public highways unless the owner or operator thereof within ten (10) calendar days or seven (7) business days as provided by law, whichever is greater, after the expiration of any such three-month period shall apply for and pay the required fee for a license for an additional three-month period, or for the remainder of the year. Any person who operates any such vehicle upon the public highways after the expiration of said ten (10) calendar days or seven (7) business days as provided by law, whichever is greater, shall be guilty of a misdemeanor. In addition he shall be required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation thereof, less the fees for any period or periods of the year already paid. If, within five (5) days thereafter, no license for a full year has been purchased as required aforesaid, the Montana highway patrol, county sheriff or city police may impound such vehicle in such manner as may be directed for such cases by the supervisor of the Montana highway patrol until such requirement is met.

History: En. Sec. 6-209, Ch. 197, L. 1965, amd. Sec. 2, Ch. 292, L. 1967.

Amendments

The 1967 amendment substituted "ten (10) calendar days or seven (7) business

days as provided by law, whichever is greater" for "ten (10) days" wherever found in this section; and substituted "may" for "shall" after "city police" in the last sentence.

32-3310. Three unit combination—fees in lieu of gross weight fees otherwise provided—marking. (1) In lieu of the gross weight fees provided in sections 6-201 to 6-208 [32-3301 to 32-3308] of this chapter, the owner of any motor truck or truck-tractor used on the highways of the state in connection with two (2) trailers or semitrailers at the same time shall register them as a three unit combination in the following manner:

(a) By paying the registration and other fees covering the maximum practical gross vehicle weight for such truck or truck-tractor, but not less than the actual operating gross weight under the provisions of sections 53-114, 53-122, and sections 6-201 and 6-203 [32-3301 and 32-3303] of this chapter.

(b) By registering such trailers in accordance with the provisions of sections 53-114 and 53-112, and by paying the gross vehicle weight fee prescribed for the maximum trailing load in accordance with the provisions of sections 6-202 and 6-203 [32-3302 and 32-3303] of this chapter on the combined gross weight of the two (2) trailers or semitrailers, treating them as if they were a single unit.

(2) Vehicles on which fees are paid in accordance with this section shall have marked thereon the gross weight for which fees have been paid, and shall bear a distinctive mark designated by the commission.

(3) Nothing herein shall be construed as authorizing axle loads in excess to those established by section 32-1123.

History: En. Sec. 6-210, Ch. 197, L. 1965. section 53-112 is apparently in error, and the intention may have been to refer to section 53-122.

Compiler's Note

The reference in paragraph (1) (b) to

32-3311. Truck, truck-tractor or bus marked with weight or capacity—markings on farm, logging, livestock, ready-mix concrete, equipment or special vehicles. (1) Each truck, truck-tractor or bus shall have permanently marked in clearly visible letters and numbers either the maximum gross weight, or maximum gross weight of the combinations of vehicles, or seating capacity shall be at least two (2) inches in height and on the driver's side of the vehicle.

(2) Any vehicle registered and taxed as a farm, logging, livestock, ready-mix concrete, low-boy or special fee vehicle shall have in addition to the above markings, and equally visible, the words "Farm Vehicle," "Logging Vehicle," "Livestock Vehicle," "Mixer Vehicle," "Equipment Vehicle" or "Special Vehicle."

History: En. Sec. 6-211, Ch. 197, L. 1965.

32-3312. Additional fees on motor trucks, truck-tractors, trailers and semitrailers from other states. (1) In lieu of other fees for the licensing of vehicles, there shall be collected a fee for each motor truck, truck-tractor, trailer, and semitrailer already licensed for the year in another jurisdiction and operated upon an itinerant basis in this state. The fee shall be collected upon each entrance of such vehicle into the state, and shall be based upon the number of miles to be traveled in the state as shown in the application of the nonresident operator.

(2) The fee shall be collected for any single vehicle. When any combination of truck, truck-tractor, semitrailer, or trailer totals more than six thousand (6,000) pounds gross weight, the fee shall be collected for each unit in the combination.

(3) The fee shall be:

(a) Five dollars (\$5) for each trip of two hundred (200) miles or less.

(b) Seven dollars and fifty cents (\$7.50) for each trip of over two hundred (200) miles to four hundred (400) miles.

(c) Ten dollars (\$10) for each trip of over four hundred (400) miles.

(4) Such fees shall not apply to any trailer the principal use of which is as temporary or permanent living quarters, or to any vehicle of a carnival which is under contract with a state, county, or district fair association.

History: En. Sec. 6-212, Ch. 197, L. 1965.

32-3313. Temporary trip permits showing payment of fees—display.

(1) Temporary trip permits showing payment of the fees provided for in the last section shall be issued under such rules and regulations as may be prescribed by the commission. Such permit shall be displayed in the vehicle for which the fee has been paid at all times while such vehicle is being operated on the highways of this state by posting it where it may be read.

(2) The commission may limit the operation of any such vehicle in this state to a definite period of time.

History: En. Sec. 6-213, Ch. 197, L. 1965.

32-3314. Time for payment of fees by nonresidents. A nonresident owner or operator of a motor truck, truck-tractor, trailer or semitrailer shall, immediately upon arrival in the state, contact the nearest highway patrol office, any commission office, the county sheriff, or the county treasurer's office to pay the fee and secure the permit prescribed. All fees collected shall immediately be remitted to the county treasurer.

History: En. Sec. 6-214, Ch. 197, L. 1965.

32-3315. Sales tax on new motor vehicles. (1) In consideration of the right to use the highways of the state, there shall be imposed a tax upon all sales of new motor vehicles for which a license is sought and an original application for title is made. The word motor vehicle as used in this section shall mean automobiles, auto trucks and motorcycles, propelled by their own power, used upon the public highways of the state. The tax shall be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) The sales tax shall be:

(a) One and one-half per cent ($1\frac{1}{2}\%$) of the F.O.B. factory list price or F.O.B. port of entry list price, during the first quarter of the year.

(b) One and one-eighth per cent ($1\frac{1}{8}\%$) of the list price during the second quarter of the year.

(c) Three-fourths ($\frac{3}{4}$) of one per cent (1%) during the third quarter of the year.

(d) Three-eighths ($\frac{3}{8}$) of one per cent (1%) during the fourth quarter of the year.

(3) In case the manufacturer or importer fails to furnish the F.O.B. factory list price or F.O.B. port of entry list price, the highway commission may use any published price lists.

(4) The proceeds from this tax should be remitted to the state treasurer every thirty (30) days for credit to the earmarked revenue fund of the state highway account.

(5) The new vehicle shall not be subject to any other assessment or taxation during the calendar year in which the original application for title is made.

History: En. Sec. 6-215, Ch. 197, L. 1965; amd. Sec. 5, Ch. 290, L. 1967.

Amendments

The 1967 amendment, in subsection (1), deleted "passenger" before "motor ve-

hicles" and added the present second sentence; substituted "earmarked revenue fund of the state highway account" for "commission" at the end of subsection (4); deleted "whether or not it is in the state on the first day of January of that year" at the end of subsection (5); and deleted subsection (6), which read, "The tax herein imposed shall not apply to any motor vehicle assessed pursuant to the provisions of section 84-406."

Repealing Clause

Section 6 of Ch. 290, Laws 1967 read "That section 84-6009, Revised Codes of Montana, 1947, is repealed."

Effective Date

Section 7 of Ch. 290, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

References

Swartz v. Berg, 147 M 178, 411 P 2d 736.

32-3316. Violation—penalty. Any owner or operator of a motor truck, truck-tractor, trailer, semitrailer, bus or automobile who violates any provision of this part [chapter] is guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars (\$300), or by a sentence of not more than sixty (60) days in the county jail, or both.

History: En. Sec. 6-216, Ch. 197, L. 1965.

32-3317. Excess weight—penalties. (1) The operator shall be subject to the penalties stated in this section whenever the gross laden weight of any motor truck, truck-tractor, trailer, or semitrailer operated upon any highway in this state exceeds:

(a) The gross maximum weight marked upon the vehicle pursuant to section 6-211 [32-3311], or

(b) The gross vehicle weight shown on the owner's certificate of registration and tax receipt issued pursuant to section 53-107, or

(c) The gross vehicle weight shown on the gross vehicle weight receipt issued pursuant to section 53-620.

(2) The operator shall:

(a) Immediately unload all cargo in excess of the gross maximum weight for which the vehicle has been taxed.

(b) Immediately thereafter pay to the nearest county treasurer the difference between the fee already paid and that applicable to the gross weight of his vehicle before unloading the excess, provided that it does not exceed the legal axle weight.

(c) Immediately thereafter reload the cargo unloaded.

(3) If the gross maximum weight marked upon the vehicle is less than gross vehicle weight shown on the owner's registration tax receipt or on the gross vehicle weight receipt, and the receipt shows that the proper fee has been paid for the weight stated thereon, there shall be no penalty for improper marking.

History: En. Sec. 6-217, Ch. 197, L. 1965.

CHAPTER 34—FEES FOR DRIVE-AWAY OR TOW-AWAY TRANSPORTERS

Section 32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods.

32-3402. One-trip fee in addition to permit and plate fees, payable quarterly.

32-3403. Disposition of funds collected.

- 32-3404. Fees provided for are in addition to fees now payable under Title 8, Chapter 1.
- 32-3405. Fees provided are in lieu of other fees payable—election to pay other fees.
- 32-3406. Exemptions from fees.

32-3401. Permit and transit plates for new vehicles being transported by drive-away or tow-away methods. (1) Every person, firm, partnership or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, foreign countries or provinces, by the drive-away or tow-away methods where such vehicles being driven, towed or transported by the saddle-mount, tow-bar or full-mount methods, or any lawful combination thereof, will be transported over the highways of the state of Montana but once, may annually apply to the registrar of motor vehicles for a permit to use the highways of this state, and shall pay, upon filing such application, a fee of one hundred dollars (\$100). Upon processing of the application, the registrar of motor vehicles shall issue an annual permit to the applicant.

(2) The permit holder may also apply to the registrar of motor vehicles for a sufficient number of distinctive transit plates or devices showing the permit number for identification of the vehicles being transported by the permit holder, and such plates or devices may be used on any vehicle being driven, towed or transported by and under the control of the permit holder. The registrar of motor vehicles shall collect the additional sum of one dollar (\$1) for each pair of transit plates or devices applied for and issued.

(3) The registrar of motor vehicles shall retain the permit and plate fees to defray costs of administering this act.

(4) The permit and transit plates or devices expire on December 31 of each year.

History: En. Sec. 6-401, Ch. 197, L. 1965. of Chapter 6 of the Highway Code, entitled "Fees for Drive-Away or Tow-Away Transporters." There was no Part 3 of Chapter 6.

Compiler's Note

This chapter was designated as Part 4

32-3402. One-trip fee in addition to permit and plate fees, payable quarterly. In addition to the permit and plate fees, a permit holder shall pay to the registrar of motor vehicles a one-trip fee of five dollars (\$5) per driven vehicle. The fee shall be paid within fifteen (15) days after the end of the calendar quarter upon forms recommended or supplied by the registrar of motor vehicles.

History: En. Sec. 6-402, Ch. 197, L. 1965.

32-3403. Disposition of funds collected. The registrar of motor vehicles shall retain five per cent (5 %) of the funds collected in payment of the trip fees to defray costs of administration. The remaining ninety-five per cent (95 %) shall be remitted, on or before the fifteenth day of

each month after collection, to the state treasurer for deposit to the credit of the commission.

History: En. Sec. 6-403, Ch. 197, L. 1965.

32-3404. Fees provided for are in addition to fees now payable under Title 8, Chapter 1. The fees provided for drive-away or tow-away transportation are in addition to any fees payable by for-hire carriers under the provisions of Chapter 1, Title 8, Revised Codes of Montana, 1947, as amended.

History: En. Sec. 6-404, Ch. 197, L. 1965.

32-3405. Fees provided are in lieu of other fees payable—election to pay other fees. The fees provided for drive-away or tow-away transporters are declared to be in consideration of the right to use the highways of the state, and are in lieu of all other fees including those which might be payable, under the provisions of part 2 of this chapter [chapter 33 of this title]. However, any operator may elect to pay the fees payable under the provisions of that part [chapter].

History: En. Sec. 6-405, Ch. 197, L. 1965.

32-3406. Exemptions from fees. The fees provided for drive-away or tow-away transporters shall not apply to:

- (1) Vehicles regularly used in the hauling of vehicles by the truck-away method, or to the vehicles so transported.
- (2) Vehicles operated under dealers' licenses or plates.
- (3) Vehicles registerable under any other provisions of law.
- (4) Any person not issued a drive-away or tow-away permit.

History: En. Sec. 6-406, Ch. 197, L. 1965.

CHAPTER 35—BOND ISSUES FOR STATE TOLL BRIDGES

- Section 32-3501. Toll bridge bond issues—authorization—nature.
 32-3502. Toll bridge bonds—maturity—interest.
 32-3503. Toll bridge bonds—sale—registration.
 32-3504. Toll bridge bonds—proceeds—insufficiency—surplus.
 32-3505. Lien on moneys received from bonds.
 32-3506. Separate funds—depositories.
 32-3507. Construction fund—disposition of surplus.
 32-3508. Revenue fund.
 32-3509. Sinking fund.

32-3501. Toll bridge bond issues—authorization—nature. (1) The authority is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of revenue bonds for the purpose of paying the cost of any toll bridge. Each resolution providing for the issuance of bonds shall set forth and identify the toll bridge for which the bonds are to be issued. The bonds authorized by each resolution shall constitute a separate series identifiable by a series letter or letters.

(2) Each bond issued by the authority shall contain a statement on the face thereof that the state shall not be obligated to pay the same or the interest thereon except from the special fund provided for that purpose. Toll bridge bonds shall be secured only by the revenues from the toll bridge or toll bridges constructed with the proceeds of such bonds.

(3) All such bonds shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities [Chapter 8, Title 87A].

(4) In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes with the same effect as though they had remained in office until such delivery.

History: En. Sec. 6-501, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 5 of Chapter 6 of the Highway Code, entitled "Bond Issues for Toll Bridges."

32-3502. Toll bridge bonds—maturity—interest. (1) Toll bridge bonds shall mature at such time or times, not more than twenty (20) years from their date or dates, as may be fixed by the authority's resolution. However, they may be made redeemable before maturity at the option of the authority at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds.

(2) The authority shall determine:

(a) The rate of interest such bonds shall bear, not exceeding six per cent (6 %) per annum.

(b) The time or times of payment of such interest.

(c) The form of the bonds and the interest coupons to be attached thereto.

(d) The manner of executing the bonds and coupons.

(e) The denomination or denominations of the bonds; and

(f) The place or places of payment of principal and interest, which may be at any bank or trust company.

(3) Prior to the preparation of definitive bonds, the authority may issue temporary bonds with or without coupons under the same restrictions as definitive bonds. Such bonds shall be exchangeable for definitive bonds when such bonds have been executed and are available for delivery.

History: En. Sec. 6-502, Ch. 197, L. 1965.

32-3503. Toll bridge bonds—sale—registration. (1) The bonds authorized may be issued and sold from time to time, in such amounts as shall be determined by the authority. The authority may sell said bonds in such manner and for such price as it may determine to be in the best interests of the state. However, no such sale shall be made for less than a price which, computed with relation to the absolute maturity of the bonds in accordance with standard tables of bond values, will show

a net return of over six per cent (6 %) per annum to the purchaser upon the amount paid therefor.

(2) The authority may make provision for the registration of toll bridge bonds in the name of the owner as to principal alone or as to both principal and interest.

History: En. Sec. 6-503, Ch. 197, L. 1965.

32-3504. Toll bridge bonds—proceeds—insufficiency—surplus. (1) The proceeds of toll bridge bonds shall be used solely for the payment of the cost of the toll bridge constructed according to law for the payment of which such bonds were issued, and shall be disbursed in such manner and under such restrictions as the authority may provide.

(2) If such proceeds shall be less than the cost of any toll bridge, additional bonds may be issued in like manner to provide the amount of such deficit. Unless otherwise provided in the resolution authorizing the bonds, they shall be deemed to be of the same issue, entitled to payment from the same fund, and of equal preference as the bonds first issued for the same toll bridge.

(3) If such proceeds exceed the cost of any toll bridge, the surplus shall be paid into the fund provided for the payment of principal and interest of such bonds.

History: En. Sec. 6-504, Ch. 197, L. 1965.

32-3505. Lien on moneys received from bonds. There is hereby created and granted a lien in favor of the holders of any bonds issued by the authority for payment of the cost of a particular toll bridge upon all moneys received from any such bonds until such moneys are applied in payment of such bonds.

History: En. Sec. 6-505, Ch. 197, L. 1965.

32-3506. Separate funds—depositories. (1) The authority shall create three (3) separate funds for the bonds of each series issued:

- (a) The toll bridge construction fund.
- (b) The toll bridge revenue fund.
- (c) The toll bridge sinking fund. Each fund shall be identified by the same series letter or letters as the bonds of such series.

(2) The money in the funds shall be deposited in any depository or depositories and secured in such manner as the authority may determine. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish indemnifying bonds or to pledge such securities as may be required by the authority.

History: En. Sec. 6-506, Ch. 197, L. 1965.

32-3507. Construction fund—disposition of surplus. (1) The proceeds of the bonds of each series issued by the authority shall be placed to the

credit of the appropriate construction fund which shall at all times be kept segregated from all other funds.

(2) There shall also be credited to the appropriate construction fund:

(a) All interest accrued upon the bonds.

(b) All interest received upon the deposits of moneys in the fund.

(c) All money received by grant or donation from the United States or any other source for the construction of such toll bridge.

(3) The moneys in each construction fund shall be disbursed to pay the cost of the toll bridge for which such fund was created. Any surplus which may remain in any construction fund after providing for the payment and the cost of such toll bridge shall be added to the appropriate sinking fund.

History: En. Sec. 6-507, Ch. 197, L. 1965.

32-3508. Revenue fund. All tolls collected by the engineer under the supervision of the authority and subject to its rules and regulations shall be deposited to the credit of the respective toll bridge revenue fund designated by the authority.

History: En. Sec. 6-508, Ch. 197, L. 1965.

32-3509. Sinking fund. (1) In the resolution authorizing the issuance of each series of bonds, the authority shall provide for paying into the appropriate sinking fund at stated intervals all moneys then remaining in the revenue fund after paying all costs of operation, maintenance and repair of the toll bridge with respect to which such revenue fund was created.

(2) All moneys in each sinking fund shall be pledged for the payment of and used only for the purpose of paying:

(a) The interest upon the bonds as it becomes due.

(b) The necessary fiscal agency charges for paying bonds and interest.

(c) The principal of the bonds as they fall due.

(d) Any premiums upon bonds retired by call or purchase.

(3) Prior to the issuance of any bonds in a series the authority may provide by resolution for using the sinking fund or any part of such fund to purchase outstanding bonds payable from such fund. The price to be paid cannot exceed the price, if any, at which such bonds will be payable or redeemable at the next interest date. All bonds redeemed or purchased shall be canceled and no bonds issued in place thereof.

(4) The resolution authorizing any bonds may provide for a reserve for the payment of principal and interest. The moneys in each sinking fund, less such reserve, if not used within a reasonable time for the purchase of bonds for cancellation, shall be used to redeem bonds then subject to redemption at the redemption price then applicable.

History: En. Sec. 6-509, Ch. 197, L. 1965.

CHAPTER 36—COUNTY TAX LEVIES FOR ROAD
AND BRIDGE CONSTRUCTION

- Section 32-3601. General road tax.
 32-3602. Special bridge taxes—levy and collection.
 32-3603. Suburban railway to pay county for use of bridge.
 32-3604. Special tax for construction and maintenance.
 32-3605. Additional tax levy for road and bridge construction.

32-3601. General road tax. (1) To raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a general tax upon the taxable property in the county of not more than twelve (12) mills, payable to the county treasurer. The tax from freeholders shall be collected the same as other taxes, and from nonfreeholders as the board may direct.

(2) This section shall not apply to incorporated cities and towns which, by ordinance, provide for the levy of a like tax for road, street, or alley purposes.

(3) All moneys collected under this section shall belong to the county road fund.

History: En. Sec. 7-101, Ch. 197, L. 1965; amd. Sec. 1, Ch. 83, L. 1967.

Chapter 7, entitled "Tax Levies for Road and Bridge Construction."

Compiler's Note

Chapters 36 to 38, inclusive, of this title were designated as Chapter 7 of the Highway Code, entitled "County Finance." This chapter was designated as Part 1 of

Amendments

The 1967 amendment increased the tax limit in subsection (1) from 10 to 12 mills.

32-3602. Special bridge taxes—levy and collection. (1) Each board may levy a special tax not to exceed three (3) mills on all taxable property in the county for the purpose of constructing, maintaining and repairing free public bridges.

(2) An additional levy for these purposes may be made under the following conditions:

(a) In any county where the total linear feet of bridges or bridge construction is more than four thousand (4,000) feet and the taxable value of property in that county is four million dollars (\$4,000,000) or less, the board may, if necessary, levy one (1) mill.

(b) In counties where the total linear feet of bridges or bridge construction is more than six thousand (6,000) feet and the taxable value of property in that county is not less than four million dollars (\$4,000,000) nor more than twelve million dollars (\$12,000,000), the board may, if necessary, levy two (2) mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. The money shall be kept as a special bridge fund, subject to the order of the board for use as herein provided, and shall not be transferable to any other fund.

History: En. Sec. 7-102, Ch. 197, L. 1965.

32-3603. Suburban railway to pay county for use of bridge. (1) Before any bridge constructed and maintained by the county in any city or town may be used as a part of any street or suburban railway, the owner of that railway shall pay into the county bridge fund a sum determined by the board which shall not be less than one-fourth ($\frac{1}{4}$) nor more than one-half ($\frac{1}{2}$) of the cost of construction of the bridge.

(2) The railway owner shall also pay such portion of the cost of maintaining the bridge (not less than one-fourth [$\frac{1}{4}$] nor more than one-half [$\frac{1}{2}$]) as is determined by the board during the time the bridge is used by the railway.

History: En. Sec. 7-103, Ch. 197, L. 1965.

32-3604. Special tax for construction and maintenance. Each board may levy a special tax not to exceed five (5) mills on the taxable property in the county to defray the costs of any bridge required to be constructed and maintained by the county in any city or town.

History: En. Sec. 7-104, Ch. 197, L. 1965.

32-3605. Additional tax levy for road and bridge construction. (1) Each board may make an additional levy upon the taxable property in the county of ten (10) mills or less for constructing public highways and bridges.

(2) Before the additional levy may be made, the question shall be submitted to a vote of the people at some general or special election in the following form, inserting the number of mills to be levied and the name of the county: "Shall there be an additional levy of _____ mills upon the taxable property in the county of _____, state of Montana, for the purpose of constructing public highways and bridges?"

☐ Yes

☐ No."

(3) A majority of the votes cast shall be necessary to permit the additional levy which shall be collected in the same manner as other road taxes.

History: En. Sec. 7-105, Ch. 197, L. 1965.

CHAPTER 37—LOCAL USE OF REGISTRATION AND OTHER VEHICLE FEES

- Section 32-3701. County motor vehicle fund.
 32-3702. Population centers—city road fund—county road fund.
 32-3703. Population centers—use of city road fund.
 32-3704. Other counties—county road fund—city road fund.
 32-3705. Counties other than population centers—use of city road fund.
 32-3706. Use of county road fund.
 32-3707. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly owned special mobile equipment.

32-3701. County motor vehicle fund. All license and registration fees collected by the treasurer of the county in which any motor vehicle is registered shall be credited to the county motor vehicle fund.

History: En. Sec. 7-201, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Part 2 of Chapter 7 of the Highway Code, entitled "Registration and Other Fees."

32-3702. Population centers—city road fund—county road fund. (1) The county treasurer shall segregate from the county motor vehicle fund, and designate as the "city road fund":

(a) Fifty per cent (50 %) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city.

(i) Having a population of thirty-five thousand (35,000) or more according to the federal census of 1930, or

(ii) Lying within one (1) mile of the limits of an incorporated city having a population of thirty-five thousand (35,000) or more according to the federal census of 1930.

(b) Twenty-five per cent (25 %) of the net license fees derived from the registration of motor vehicles whose owners reside within the limits of any incorporated city having a population of ten thousand (10,000) or more according to the federal census of 1950, which city is located in a county which has an area of less than seven hundred and fifty (750) square miles.

(2) The balance of the county motor vehicle fund remaining after segregation of the city road fund shall be transferred to the "county road fund."

History: En. Sec. 7-202, Ch. 197, L. 1965; amd. Sec. 1, Ch. 89, L. 1967.

Repealing Clause

Section 2 of Ch. 89, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Compiler's Note

The compiler has inserted the bracketed designation for subsection (1).

Amendments

The 1967 amendment substituted "1930" for "1960" in subdivision (a)(i) and (a)(ii), and substituted "1950" for "1960" in subdivision (b).

Effective Date

Section 3 of Ch. 89, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

32-3703. Population centers—use of city road fund. (1) At the end of each month, the county treasurer shall pay to the appropriate city treasurer the fees held in the city road fund.

(2) The city treasurer shall hold the fees so paid in a separate "city road fund," which shall be used by the city council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

(3) All such work shall be under the supervision of the county road superintendent, who shall co-operate with the city council in designating the highway or street upon which work is to be done and in selecting the type of pavement to be used.

(4) The cost of supervision by the county surveyor shall not exceed five per cent (5 %) of the cost of the work.

History: En. Sec. 7-203, Ch. 197, L. 1965.

32-3704. Other counties—county road fund—city road fund. (1) In every county which does not have a city and area populated as provided in section 7-202 of this part [32-3702 of this chapter], the county treasurer shall divide the county motor vehicle fund between a “city road fund” and a “county road fund.”

(2) The division shall be in the ratio determined by the board of county commissioners. The board shall determine the ratio by comparing the total number of miles of public streets and highways, which are not either state or federal highways, situated within the limits of incorporated cities and towns with the total number of miles of public streets and highways, which are not either state or federal highways, outside of such corporate limits; providing that state or federal roads may be counted if they are by written agreement maintained by the city or county.

History: En. Sec. 7-204, Ch. 197, L. 1965; amd. Sec. 1, Ch. 16, L. 1967.

Amendments

The 1967 amendment inserted “which

are not either state or federal highways” after “streets and highways” each time those words appear and added the proviso at the end of subsection (2).

32-3705. Counties other than population centers—use of city road fund. (1) At the end of each month, the county treasurer shall pay to the treasurer of each incorporated city or town such proportion of the city road fund as directed by the board of county commissioners.

(2) The city or town treasurer shall hold the fund so paid in a separate “city road fund,” which shall be used by the city or town council only for the construction, repair, and maintenance of permanent highways and streets within the corporate limits.

History: En. Sec. 7-205, Ch. 197, L. 1965.

32-3706. Use of county road fund. The county road fund of each county shall be used for the construction, repair, and maintenance of all public highways within its boundaries which are outside the corporate limits of any city or town and are not either state or federal highways.

History: En. Sec. 7-206, Ch. 197, L. 1965.

32-3707. Special mobile equipment—exemption from registration and payment of fees and charges—identification plate—application—fee—publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in section 53-642 and occasionally moves that equipment on, over, or across the highways of the state, shall not be subject to registration of that equipment or be required to pay the fees and charges provided for in the chapter “State Finance” [chapter 32 to 35 of this title]. Prior to

any movement on the highways, however, each piece of equipment shall display an equipment identification plate attached thereto.

(2) Annual application for the identification plate shall be made to the county treasurer before any piece of equipment is moved on the highways. Application shall be made on a form furnished by the registrar of motor vehicles, together with the payment of a fee of five dollars (\$5); provided, that such equipment for which a special mobile equipment plate is sought, shall be subject to the assessment of personal property taxes either on the date application is made for such plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March, provided further, that it is a condition precedent to the issuance of a special mobile equipment plate that the personal property taxes so assessed against the special mobile equipment, be paid. The fees collected under this act shall belong to the county road fund.

(3) The identification plate shall expire on March 31 of each year.

(4) Publicly owned special mobile equipment, and implements of husbandry used exclusively by an owner in the conduct of his own farming operations, are exempt from the provisions of this section.

History: En. Sec. 7-207, Ch. 197, L. 1965; amd. Sec. 1, Ch. 232, L. 1967. (2), inserted the provisos after "five dollars (\$5)"; and, in subdivision (3), substituted "March 31" for "December 31."

Amendments

The 1967 amendment, in subdivision

CHAPTER 38—COUNTY ROAD AND BRIDGE BONDS

- Section 32-3801. County commissioners may issue bonds.
 32-3802. Negotiations for refunding.
 32-3803. Single purpose highway—bridge.
 32-3804. Limitation on amount of bonds—issuance in excess of limitations void.
 32-3805. Term—power to redeem—maximum interest.
 32-3806. Form of bonds.

32-3801. County commissioners may issue bonds. (1) Each board may issue, negotiate and sell coupon bonds on the credit of the county:

(a) To construct or improve, or acquire rights of way for public highways; or bridges.

(b) To refund, pay and redeem optional, redeemable or maturing highway or bridge bonds when there are not sufficient funds available and it is deemed in the best interests of the county to refund the bonds.

(2) The value of the bonds issued and all other outstanding indebtedness of the county shall not exceed five per cent (5%) of the value of the taxable property within the county as ascertained by the last preceding general assessment.

(3) The bonds shall be issued as provided in section 16-2008.

History: En. Sec. 7-301, Ch. 197, L. 1965. **Compiler's Note** This chapter was designated as Part 3 of Chapter 7 of the Highway Code, entitled "Bonds."

32-3802. Negotiations for refunding. (1) Whenever the total indebtedness of a county exceeds the constitutional limitation of five per cent (5 %) of the value of the taxable property therein and the board determines that the county is unable to pay such indebtedness in full, the board may:

(a) Negotiate with the bondholders for an agreement or agreements whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof.

(b) Enter into such agreement or agreements.

(c) Issue refunding bonds for the amount agreed upon. These bonds may be issued in more than one series and each series may be either amortization or serial bonds.

(2) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds.

History: En. Sec. 7-302, Ch. 197, L. 1965.

32-3803. Single purpose highway—bridge. (1) It shall be deemed a single purpose to:

(a) Acquire a right of way for and construct a public highway including any bridge or bridges thereon.

(b) Contribute to the cost of a federal-aid bridge.

(c) Contribute to the cost of a federal-aid highway project on a highway leading to a federal-aid bridge.

(2) Construction of two or more bridges not forming a part of the same public highway shall be deemed separate purposes.

(3) Nothing contained in this section shall be construed as amending or repealing sections 16-1163—16-1165.

History: En. Sec. 7-303, Ch. 197, L. 1965.

32-3804. Limitation on amount of bonds—issuance in excess of limitations void. (1) Except as otherwise provided hereafter and in section 16-2010, no county shall issue bonds which, with all outstanding bonds and warrants, except county high school bonds and emergency bonds, will exceed two and one-half per cent ($2\frac{1}{2}$ %) of the value of the taxable property therein. The taxable property shall be ascertained by the last assessment for state and county taxes prior to the issuance of such bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants will exceed two and one-half per cent ($2\frac{1}{2}$ %), but will not exceed five per cent (5 %) of the value of such taxable property, when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) All bonds issued by any county in excess of the limitations herein fixed shall be null and void, except that the limitations shall not apply

to refunding bonds issued to pay or retire county bonds lawfully issued prior to January 1, 1932.

(4) The words "value of the taxable property" are used in this section in the same sense as in section 5 of article 13 of the constitution and shall be given the same meaning and construction.

History: En. Sec. 7-304, Ch. 197, L. 1965.

32-3805. Term—power to redeem—maximum interest. (1) No bonds issued under subsection (1) of section 7-301 of this part [32-3801] shall be for a longer term than twenty (20) years.

(2) No bond issued under subsection (2) of that section shall be issued for a term longer than ten (10) years, except that:

(a) If the unexpired term of the bonds to be refunded is greater than ten (10) years, the refunding bonds may be issued for the unexpired term; or

(b) If the ten (10) year term requires an annual tax levy for payment of the refunding bonds which exceeds ten (10) mills on all property subject to taxation, the term may be so extended as to reduce the annual levy to ten (10) mills. In no event shall the term exceed twenty (20) years.

(3) All bonds issued for a term longer than five (5) years shall be redeemable at the option of the county five (5) years after the date of issue and on any payment due date thereafter before maturity. This statement shall appear on the face of each bond.

(4) The maximum rate of interest which any bonds shall bear is six per cent (6 %) per annum. Interest shall be payable semiannually.

History: En. Sec. 7-305, Ch. 197, L. 1965.

section to subsection (2) of section 32-3801 may be in error. It may have been intended to refer to paragraph (1) (b) of section 32-3801.

Compiler's Note

The reference in subsection (2) of this

32-3806. Form of bonds. (1) All bonds issued by any county shall be either amortization bonds or serial bonds. Amortization bonds shall be issued in preference to serial bonds.

(2) The term "amortization bonds" means that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable. The part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date. However, the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

(3) The term "serial bonds" means a bond issue payable in equal annual installments, one (1) installment consisting of one (1) or more bonds becoming due and payable each year. The amount to be paid and

redeemed each year shall be determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run, so that the total amount of principal to be paid each year will be the same. The amount of installments becoming due and payable the first year, or the first and second years, may vary from the others to the extent which results from fixing the amounts of each bond of the other installments at one hundred dollars (\$100), five hundred dollars (\$500) or one thousand dollars (\$1,000) as may be determined by the board.

History: En. Sec. 7-306, Ch. 197, L. 1965.

CHAPTER 39—ACQUISITION AND DISPOSITION OF PROPERTY BY STATE

- Section 32-3901. Rights acquired by public in highway.
 32-3902. General power of commission to acquire interests in property.
 32-3903. Purposes for which property acquired.
 32-3904. Exercise of right of eminent domain—presumption.
 32-3905. Acquisition of whole parcel—sale of excess.
 32-3906. Power to acquire for future.
 32-3907. Road building materials.
 32-3908. No compensation in certain cases—exceptions.
 32-3909. Exchange of interests in real property.
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 32-3911. Conduct of sale.
 32-3912. Option of original owner or successor in interest to purchase at sale price.
 32-3913. Private sale if no bid or offer.
 32-3914. Sale of personal property—maps, books, other printed matter.
 32-3915. Conveyances—execution—contents.
 32-3916. Rendering irrigable lands unusable—unpaid construction costs.
 32-3917. Abandonment or vacation of federal-aid or state highways.
 32-3918. Highway crossing railroad, canal, or ditch.
 32-3919. Rights of way for toll bridges.
 32-3920. Acquisition of property for controlled access facility.
 32-3921. Payment of moving expenses authorized.
 32-3922. Highway commission to adopt rules and regulations.
 32-3923. Definitions.
 32-3924. Advisory assistance.
 32-3925. Compensation for moving expense as part of cost of construction—fixed payments in lieu of actual expense—dwelling—business or farm operation.
 32-3926. Additional payment for realty with qualified dwelling—period of occupancy—amount—owner must subsequently purchase dwelling.
 32-3927. Additional payment for realty with other dwelling—period of occupancy—amount.
 32-3928. Review of application for assistance—highway commission's decision final.
 32-3929. Rules and regulations.
 32-3930. Assistance payments not income for state tax purposes.
 32-3931. No new element of condemnation damages created.

32-3901. Rights acquired by public in highway. By taking or accepting land for a highway, the public may acquire either a fee simple or any lesser estate or interest.

History: En. Sec. 8-101, Ch. 197, L. 1965.

Compiler's Note

Chapters 39 and 40 of this title were designated as Chapter 8 of the Highway

Code, entitled "Acquisition and Disposition of Property and Interests Therein." This chapter was designated as Part 1 of Chapter 8, entitled "Acquisition and Disposition by State."

32-3902. General power of commission to acquire interests in property. Notwithstanding any other provision of law, the commission may acquire by purchase or any other lawful manner any lands or other real property, excluding oil, gas and mineral rights, which it deems reasonably necessary for present or future highway purposes. The commission may acquire a fee simple or any lesser estate or interest.

History: En. Sec. 8-102, Ch. 197, L. 1965.

32-3903. Purposes for which property acquired. The acquisition of lands or other property, or any interest therein, for present or future highway purposes includes, but is not limited to any of the following purposes: (1) For rights of way, including those necessary for highways within cities.

(2) For exchanging lands or other property or any interest therein for other such lands or interests for rights of way or other authorized purposes. The right of eminent domain shall not be exercised for this purpose.

(3) For deposits of road building materials, including rock, gravel, sand, and earth for reasonably foreseeable future road building purposes and uses. The right of eminent domain shall not be exercised to acquire any such deposits which constitute a component part of an existing private business enterprise.

(4) For offices, weighing stations, shops, storage yards, buildings, rest areas, informational sites, or communication facilities.

(5) For parks adjoining or near any highway.

(6) For the culture and support of trees or shrubs which benefit any highway by aiding in the maintenance and preservation of the roadbed.

(7) For drainage in connection with any highway.

(8) For the maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public.

(9) For the construction and maintenance of stock lanes or trails.

(10) For the construction and maintenance or replacement of private or public drainage systems, or natural water or drainage courses made necessary by highway construction.

(11) For providing land or other real property easements or rights of way for necessary relocation of existing utilities, utility easements, or other easements for facilities or purposes then in place or in effect upon a proposed right of way.

History: En. Sec. 8-103, Ch. 197, L. 1965.

DECISIONS UNDER FORMER LAW

Market Value of Condemned Land

Where highway commission condemned land for purposes of gaining an easement for the construction and maintenance of a state highway, and not for obtaining a deposit of gravel, sand, and other materials on the land, testimony as to the value of such materials was inadmissible as speculative, remote and con-

jectural and not within the purpose of former section 32-1615 (c). *State Highway Commission v. Mott*, 142 M 402, 384 P 2d 922.

Railroad Right of Way

Former section 32-1615 (k) permitted the state to condemn land in order to provide right of way for a railroad being

moved to allow construction of public highways. *State ex rel. De Puy v. District Court*, 142 M 328, 384 P 2d 501.

Highway Commission, 141 M 253, 370 P 2d 486, 488.

Rental of Unused Right of Way

The 1961 amendment of former section 32-1615 so as to give express authority for the rental of unused right of way rendered moot a taxpayer's action to restrain the highway commission from granting an encroachment permit, where there was no indication that the permit, when granted, would violate the terms of the statutory amendment. *Wilson v. State*

Transfer of Land

Any manner of transferring unused highway right of way which was inconsistent with former section 32-1615 was by implication excluded. *Wilson v. State Highway Commission*, 140 M 253, 370 P 2d 486, 488.

The state highway commission cannot give away or loan gratuitously the use of an unused highway right of way. *Wilson v. State Highway Commission*, 140 M 253, 370 P 2d 486, 488.

32-3904. Exercise of right of eminent domain—presumption. (1) Whenever the commission cannot acquire lands or other property or interests therein at a price or cost which it deems reasonable, it may direct the attorney general or any county attorney to procure the interests by proceedings to be instituted as provided in sections 93-9901—93-9926 against all nonaccepting landholders.

(2) It shall not so direct the attorney general or any county attorney until it adopts a resolution declaring that:

(a) Public interest and necessity require the construction or completion by the state of the highway or improvement for one of the purposes set forth in section 8-103 [32-3903].

(b) The interest described in the resolution and sought to be condemned is necessary for the highway or improvement.

(c) The highway or improvement is planned and located in a manner which will be compatible with the greatest public good and the least private injury.

(3) The resolution shall create and establish a disputable presumption:

(a) Of the public necessity of the proposed highway or improvement.

(b) That the taking of the interest sought is necessary therefor.

(c) That the proposed highway or improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.

History: En. Sec. 8-104, Ch. 197, L. 1965.

DECISIONS UNDER FORMER LAW

Burden of Proof

Where commission condemned defendant's land to build bypass through it rather than reconstruct highway through town, it became incumbent upon the defendant to show fraud, abuse of discretion or arbitrary action in order to defeat the commission's action, whereas the commission had only to establish that the taking of the property was reasonably necessary for rebuilding the highway. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

Judicial Interference

It is not within the province of the judicial branch of government to interfere with the exercise of eminent domain. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

Necessity of Use

Even when necessity has been challenged on the ground of arbitrariness or excessiveness of the taking, condemnor still has discretion to determine the location, route and area of the land to be taken. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

Power To Condemn

The power of eminent domain is vested exclusively in the legislature, and can be exercised only by the legislature and those agencies to whom it has delegated the power. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

Selection of Route

Highway commission did not abuse its

discretion in taking farm land by eminent domain even though it was shown that town through which old highway had passed would be financially harmed and bypass would cost more to build, since the resulting savings in travel costs to highway users, in addition to the compensation paid the petitioners, offset disadvantages claimed by them. *State Highway Commission v. Crossen-Nissen Co.*, 145 M 251, 400 P 2d 283.

32-3905. Acquisition of whole parcel—sale of excess. (1) Whenever any interest in a part of a parcel of land or other real property is to be acquired for highway purposes, leaving the remainder in such shape or condition as to be of little market value, or to give rise to claims or litigation over severance or other damage, the commission may acquire the whole parcel. It may sell or exchange the remainder for other property needed for highway purposes.

(2) Whenever a part of a parcel of land acquired for highway purposes is in such a shape or size as to come within the provisions of section 11-614, the commission shall prepare and file the required plat in the office of the county clerk and recorder.

History: En. Sec. 8-105, Ch. 197, L. 1965.

Amount of Property Which May Be Taken

Trial court did not exceed powers under statute when it limited amount of property sought to be appropriated by state to that portion of property actually needed for proposed highway improvement because question whether public interest required taking of entire parcel was question of fact to be determined by court;

preliminary order of court limiting amount of appropriation to that actually required for construction of city street improvements was supported by evidence that excess land retained some value as separate parcel notwithstanding commission's argument that remaining land was financial remnant of such value as to be of little market value and give rise to claims over severance and other damages. *State Highway Commission v. Chapman*, — M —, 446 P 2d 709.

32-3906. Power to acquire for future. (1) The power conferred by this chapter [chapters 39 and 40 of this title] to acquire interests in lands or other real property includes power to acquire for reasonably foreseeable future needs.

(2) The commission may lease unused portions of any lands or other real property which are held for highway purposes and interstate highway rights of way which are not presently needed for highway purposes on such terms and conditions as it may fix. The commission may repair, maintain, and care for such property in order to secure rent therefrom.

(3) All rent received shall be deposited to the credit of the commission.

History: En. Sec. 8-106, Ch. 197, L. 1965.

32-3907. Road building materials. (1) Any right of way or easement acquired by the commission for construction, operation, repair, reconstruction, or maintenance of highways shall include, among others, the right to use, remove, relocate, redistribute, or otherwise dispose of any and all gravel and other road-building materials found or located within the boundaries of the right of way or easement.

(2) For the purposes of this chapter [chapters 39 and 40 of this title], such gravel or materials shall be deemed to be real property and not minerals.

History: En. Sec. 8-107, Ch. 197, L. 1965.

32-3908. No compensation in certain cases—exceptions. (1) Whenever the commission files a description and plan as provided in section 4-113 [32-2413] of this code, no consideration, allowance or assessment of values or compensation shall be made in the purchase or condemnation of any buildings or improvements or subdivisions placed or erected on the land covered by the plan after the filing.

(2) The establishment of the highway location covered by the description and plan shall be ineffective one year after filing if no action to condemn or acquire the property has been commenced.

(3) Nothing in this section or in section 4-113 [32-2413] shall apply to crops or similar improvements planted on the lands described. They shall be governed by the provisions of section 93-9913.

History: En. Sec. 8-108, Ch. 197, L. 1965.

32-3909. Exchange of interests in real property. (1) The commission may determine that any interest in real property, however acquired by it, is no longer necessary to the laying out, altering, construction, improvement, or maintenance of any highway. It may then exchange any such interest, either as entire or partial consideration, for any other interest in real property needed for highway purposes. The commission may establish the manner and terms and conditions for such exchange.

(2) The owner from whom such interest was originally acquired by the state, or his successor in interest, shall have the right to require the commission to offer such land for sale in the manner set forth in sections 8-110 and 8-111 [32-3910 and 32-3911]. The commission shall notify such owner or successor in interest of its intention to exchange such interest. The owner shall make his demand for sale by registered mail to the commission within ten (10) days after receipt of notice from the commission.

History: En. Sec. 8-109, Ch. 197, L. 1965.

32-3910. Sale of interests in real property. The commission may sell any interest in real property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of any highway. If the interest is reasonably of a value in excess of one hundred dollars (\$100), sale shall be made to the highest bidder at public auction or by sealed bids as the commission may decide. The sale shall be conducted as provided in section 8-111 [32-3911].

History: En. Sec. 8-110, Ch. 197, L. 1965.

32-3911. Conduct of sale. (1) The commission shall publish notice of the sale in a newspaper published in the county in which the interest is located once a week for two (2) successive weeks. Sale shall be held at the office of the commission at the capitol.

(2) Before any sale of any interest having a value in excess of one hundred dollars (\$100), the commission shall have it appraised at a price representing a fair market value. The appraised value shall be stated in the published notice.

(3) No sale shall be made of any interest unless it has been appraised within three (3) months prior to the date of the sale. No sale shall be made for less than ninety per cent (90%) of the appraised value.

(4) No title to any interest shall pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the commission.

History: En. Sec. 8-111, Ch. 197, L. 1965.

32-3912. Option of original owner or successor in interest to purchase at sale price. The owner from whom the interest was originally acquired, or his successor in interest, shall have the option to purchase the interest by offering therefor an amount of money equal to the highest bid received for the interest at the sale. The offer shall be sent to the commission by registered mail within ten (10) days from the date of the sale.

History: En. Sec. 8-112, Ch. 197, L. 1965.

32-3913. Private sale if no bid or offer. (1) If, after proper notice is published, the commission receives neither bid at public sale nor offer from the original owner of his successor in interest, it may at any time thereafter sell the interest at private sale. At such sale, the commission may accept as the purchase price an amount of money not less than ninety per cent (90%) of the appraised value.

(2) No title to any interest shall pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the commission.

History: En. Sec. 8-113, Ch. 197, L. 1965.

32-3914. Sale of personal property—maps, books, other printed matter. (1) The commission may sell at public or private sale, as it may determine, any interest in personal property, however acquired by it, which it determines is not necessary to the laying out, altering, construction, improvement, or maintenance of any highway.

(2) The commission may sell at public or private sale, as it may determine, maps, books, pamphlets, or other printed matter, prepared or acquired by the commission. The commission may sell copies of any highway records to the public and may set reasonable prices therefor.

(3) The proceeds from sales made under the provisions of this section shall be paid into the state treasury to the credit of the commission.

History: En. Sec. 8-114, Ch. 197, L. 1965.

32-3915. Conveyances—execution—contents. (1) Any land or interest therein sold by the commission shall be conveyed only when full payment has been made therefor. It shall be conveyed by a deed or patent of conveyance without covenants which recites that it was issued under the provisions of this part [chapter].

(2) The deed or patent shall contain a reservation of easements for rights of way for the benefit of the United States, and all other reservations to which the land conveyed may be subject.

(3) The deed or patent shall be signed by the governor, or, in case of his absence or inability, the lieutenant governor. It shall be attested by the secretary of state and have attached the great seal of the state. It need not be acknowledged.

History: En. Sec. 8-115, Ch. 197, L. 1965.

32-3916. Rendering irrigable lands unusable—unpaid construction costs. Whenever the commission acquires irrigable land for highway purposes, or so acquires land as to render other irrigable land unusable for irrigation, it shall pay to the owner of the irrigation or drainage project, in addition to other sums allowed by law, a proportionate share of the unpaid construction costs of the project or drainage district.

The commission shall also pay a lump-sum amount to the district sufficient to produce on an amortized basis for a reasonable period not to exceed ninety (90) years, a sum of money equal to the annual increase in operation and maintenance costs against the remaining lands under irrigation in the district resulting from the severance from the district of the lands acquired by the commission and not overcome by bringing in new or additional land under irrigation. For the purpose of determining the amount of said lump-sum payment, the annual operation and maintenance assessment of the district shall be considered to be the average for the five (5) years, or so many years as the district has assessment experience, if less than five (5) years, preceding the date of acquisition.

History: En. Sec. 8-115, Ch. 197, L. 1965; amd. Sec. 1, Ch. 299, L. 1969.

Amendments

The 1969 amendment added the second paragraph.

Effective Date

Section 2 of Ch. 299, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

Cost of Future Operation and Maintenance

State highway commission is not obligated to pay irrigation district for future cost of operation and maintenance attributable to lands taken within irrigation district for highway purposes since lands taken will not continue to benefit from services of irrigation district, notwithstanding fact that takings have reduced total irrigable acreage of district and thereby increased per acre cost of operation and maintenance of district. *Helena Valley Irrig. Dist. v. State Highway Commission*, 150 M 192, 433 P 2d 791.

32-3917. Abandonment or vacation of federal-aid or state highways. Every federal-aid or state highway once established must continue until abandoned or vacated by operation of law, or by judgment of a court of competent jurisdiction, or by a proper order of the commission.

History: En. Sec. 8-117, Ch. 197, L. 1965.

32-3918. Highway crossing railroad, canal, or ditch. (1) Whenever any federal-aid or state highway is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must, at their expense, so prepare the railroad, canal, or ditch that the highway may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-118, Ch. 197, L. 1965.

32-3919. Rights of way for toll bridges. (1) The authority may acquire by purchase or otherwise necessary rights of way for any toll bridge and approaches. It may exercise the right of eminent domain in the name of the state for those purposes.

(2) Whenever the authority cannot acquire by purchase any right of way which it deems necessary, it may direct the attorney general or any county attorney to procure it by proceedings to be instituted as provided in sections 93-9901—93-9926 against all nonaccepting landowners.

(3) A right of way is hereby given, dedicated, and set apart for toll bridges and approaches thereto, through, over, upon, or across:

- (a) Any property of the state, including highways.
- (b) Any county road.
- (c) Any street or alley.

Acquisition and use for toll bridge and approach purposes shall be deemed a superior and more necessary public use than the public use or purpose to which the highway, road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-119, Ch. 197, L. 1965.

32-3920. Acquisition of property for controlled access facility. (1) The highway authorities of the state, counties, incorporated cities and towns, respectively, or in co-operation one with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

(2) A right of way is hereby given, dedicated, and set apart for controlled access highways or controlled access facilities through, over,

upon, or across any county road and any street or alley intersecting a controlled access highway. Acquisition of any county road, street, or alley for use as a controlled access highway or controlled access facility shall be deemed a superior and more necessary public use and purpose than the public use or purpose to which such road, street, or alley has theretofore been dedicated.

History: En. Sec. 8-120, Ch. 197, L. 1965.

DECISIONS UNDER FORMER LAW

Judicial Determination of Necessity

In adopting former section 32-2006 (controlled access highway law) the legislature is presumed to have considered sections 93-9905 and 93-9911, R. C. M.

1947, and the power to determine the public necessity of a proposed highway or facility remains with the trial judge. *State Highway Commission v. Yost Farm Co.*, 142 M 239, 384 P 2d 277.

32-3921. Payment of moving expenses authorized. The payment of moving expenses shall be made to eligible persons in accordance with the provisions of this act and such rules and regulations as shall be adopted by the Montana highway commission.

History: En. Sec. 1, Ch. 212, L. 1969.

Title of Act

An act to provide for relocation assist-

ance for persons affected by real property acquisitions for state highway purposes, and amending section 93-9913, R. C. M. 1947.

32-3922. Highway commission to adopt rules and regulations. The highway commission is authorized to adopt rules and regulations to implement the payment of moving expenses as authorized by this act. Such rules and regulations may include provisions authorizing payments made to individuals and families of fixed amounts not to exceed two hundred dollars (\$200) in lieu of their respective reasonable and necessary moving expenses.

History: En. Sec. 2, Ch. 212, L. 1969.

32-3923. Definitions. As used in this act:

(a) "Displaced person" means any individual, family, business or farm operation which moves from real property acquired for state highway purposes or for a federal-aid highway.

(b) "Individual" means a person who is not a member of a family.

(c) "Family" means two or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship.

(d) "Business" means any lawful activity conducted primarily for the purchase and resale, manufacture, processing or marketing of products, commodities, or other personal property; or for the sale of services to the public; or by a nonprofit corporation.

(e) "Farm operation" means any activity conducted primarily for the production of one or more agricultural products or commodities for sale and home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

History: En. Sec. 3, Ch. 212, L. 1969.

32-3924. Advisory assistance. (a) The commission is authorized to give relocation advisory assistance to any individual, family, business or farm operation displaced because of the acquisition of real property for any project on the state highway systems.

(b) In giving such assistance, the commission may establish a temporary local relocation advisory assistance office to assist in obtaining replacement facilities for individuals, families and businesses which must relocate because of the acquisition of right of way for any project on the state highway systems.

History: En. Sec. 4, Ch. 212, L. 1969.

32-3925. Compensation for moving expense as part of cost of construction—fixed payments in lieu of actual expense—dwelling—business or farm operation. (a) As a part of the cost of construction the commission may compensate a displaced person for his actual and reasonable expense in moving himself, family, business or farm operation, including moving personal property.

(b) Any displaced person who moves from a dwelling who elects to accept the payments authorized by this subdivision in lieu of the payments authorized by subdivision (a) of this section may receive a moving expense allowance, determined according to a schedule established by the commission not to exceed two hundred dollars (\$200), and in addition a dislocation allowance of one hundred dollars (\$100).

(c) Any displaced person who moves or discontinues his business or farm operation who elects to accept the payment authorized by this subdivision in lieu of the payment authorized by subdivision (a) of this section, may receive a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, or five thousand dollars (\$5,000), whichever is lesser. In the case of a business, no payment shall be made under this subdivision unless the commission is satisfied that the business cannot be relocated without a substantial loss of patronage, and is not a part of a commercial enterprise having at least one (1) other establishment, not being acquired, which is engaged in the same or similar business. For purposes of this subdivision, the term "average annual net earnings" means one-half ($\frac{1}{2}$) of any net earnings of the business or farm operation, before federal and state income taxes, during the two (2) taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, and includes any compensation paid by the business or farm operation to the owner, his spouse or his dependents during such two (2) year period. To be eligible for the payment authorized by this subdivision the business or farm operation must make its state income tax returns available and its financial statements and accounting records available for audit and confidential use to determine the payment authorized by this subdivision.

History: En. Sec. 5, Ch. 212, L. 1969.

32-3926. Additional payment for realty with qualified dwelling—period of occupancy—amount—owner must subsequently purchase dwell-

ing. (a) In addition to the payments authorized by section 5 [32-3925], the commission, as a part of the cost of construction, may make a payment to the owner of real property acquired for a project on the state highway systems which is improved with a single, two (2) or three (3) family dwelling, actually owned and occupied by the owner for not less than one (1) year prior to the first written offer for the acquisition of such property.

(b) Such payment, not to exceed five thousand dollars (\$5,000), shall be the amount, if any, which, when added to the acquisition payment, equals the average price required for a comparable dwelling determined, in accordance with standards established by the commission, to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and place of employment and available on the market.

(c) Such payment shall be made only to a displaced owner who purchases and occupies a dwelling, that meets standards established by the commission, within one (1) year subsequent to the date on which he is required to move from the dwelling acquired for the project.

History: En. Sec. 6, Ch. 212, L. 1969.

32-3927. Additional payment for realty with other dwelling—period of occupancy—amount. (a) In addition to the payment authorized by section 5 [32-3925], as a part of the cost of construction, the commission may make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under section 6 [32-3926], which dwelling was actually and lawfully occupied by such individual or family for not less than ninety (90) days prior to the first written offer for the acquisition of such property.

(b) Such payment, not to exceed one thousand five hundred dollars (\$1,500), shall be the additional amount which is necessary to enable such individual or family to lease or rent for a period not to exceed two (2) years, or to make the down payment on the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities.

History: En. Sec. 7, Ch. 212, L. 1969.

32-3928. Review of application for assistance—highway commission's decision final. Any displaced person aggrieved by a determination as to eligibility for a payment authorized by this act, or the amount of a payment, may have his application reviewed by the highway commission, whose decision shall be final.

History: En. Sec. 8, Ch. 212, L. 1969.

32-3929. Rules and regulations. The commission is authorized to adopt rules and regulations to implement this act, and such other rules and regulations relating to highway relocation assistance as may be necessary or desirable under federal laws and the rules and regulations pro-

mulgated thereunder. Such rules and regulations shall include provisions relating to:

(a) A moving expense allowance, as provided in subdivision (b) of section 5 [32-3925], for a displaced person who moves from a dwelling, determined according to a schedule, not to exceed two hundred dollars (\$200);

(b) The standards for decent, safe, and sanitary dwellings;

(c) Procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the commission; and

(d) Eligibility of displaced persons for relocation assistance payments, the procedure for such persons to claim such payments and the amounts thereof.

History: En. Sec. 9, Ch. 212, L. 1969.

32-3930. Assistance payments not income for state tax purposes. No payment received by a displaced person under this article shall be considered as income for Montana state income tax purposes.

History: En. Sec. 10, Ch. 212, L. 1969.

32-3931. No new element of condemnation damages created. Nothing contained in this act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of damages not in existence on the date of enactment of this act.

History: En. Sec. 11, Ch. 212, L. 1969.

CHAPTER 40—ACQUISITION AND DISPOSITION OF PROPERTY BY COUNTY

- Section 32-4001. Rights of way for county roads.
 32-4002. Petition by freeholders to establish, change, abandon, or discontinue a county road.
 32-4003. Contents of petition.
 32-4004. Investigation of petition—notice.
 32-4005. Opening of road—survey.
 32-4006. Determination of damages—declaration as road.
 32-4007. Award of damages deemed rejected—proceedings to secure right of way.
 32-4008. Damages and expenses to be paid out of county road fund.
 32-4009. Change of road upon petition.
 32-4010. Notice to district supervisor of opening of county road.
 32-4011. Record of opening or changing road.
 32-4012. Deeds and judgments for right of way—recording.
 32-4013. County road crossing railroad, canal or ditch.
 32-4014. Abandonment or vacation of county roads.
 32-4015. Stock lanes.
 32-4016. Board to transfer responsibility for right of way.
 32-4017. Acquisition of property for public ferries and wharves.
 32-4018. Acquisition of property for controlled access facility.

32-4001. Rights of way for county roads. (1) Each board shall acquire rights of way for county roads and discontinue or abandon them only upon proper petition therefor.

(2) By taking or accepting interests in real property for county roads, the public acquires only the right of way and the incidents necessary to enjoying and maintaining it.

History: En. Sec. 8-201, Ch. 197, L. of Chapter 8 of the Highway Code, entitled "Acquisition and Disposition by County." 1965.

Compiler's Note

This chapter was designated as Part 2

32-4002. Petition by freeholders to establish, change, abandon, or discontinue a county road. Any ten, or a majority, of the freeholders of a road district, taxable therein for road purposes, may petition the board in writing to open, establish, construct, change, abandon, or discontinue any county road in the district. If the county is not divided into districts the entire county shall be one road district. When the road petitioned for is on the dividing line between two counties, the same procedure must be followed, except that a copy of the petition must be presented to each board. The two boards shall act jointly.

History: En. Sec. 8-202, Ch. 197, L. 1965.

32-4003. Contents of petition. The petition must set forth: (1) The particular road or roads to be opened, established, constructed, changed, discontinued, or abandoned.

(2) The general route thereof.

(3) The lands and owners affected.

(4) Whether the owners who can be found consent thereto.

(5) Where consent is not given, the probable cost of the right of way.

(6) The necessity for, and advantage of, the petitioned action.

History: En. Sec. 8-203, Ch. 197, L. 1965.

32-4004. Investigation of petition—notice. (1) At its next regular or special meeting, or in any case, at a date within thirty (30) days after filing of any petition, the board shall cause an investigation to be made of the feasibility, desirability, and cost of granting the prayer of the petition. The investigation shall be sufficient to properly determine the merits or demerits of the petition.

(2) No more than one member of the board and the county surveyor shall make the investigation. After considering the petition and the results of the investigation, the board shall make an entry of its decision on the minutes.

(3) Within ten (10) days thereafter, the board shall cause notice of its decision to be sent by certified mail to all owners of land abutting on the road petitioned for. The owners shall be those listed on the last county assessment roll.

History: En. Sec. 8-204, Ch. 197, L. 1965.

32-4005. Opening of road—survey. If the petition is for the opening of a county road, and the board grants the prayer, ordering the road opened, it shall proceed at once to have it opened to the public and declare it to be a county road. The board may order the county surveyor, or some other competent surveyor, if the county surveyor is

incompetent to survey and plat the road. He shall file his fieldnotes with the county clerk and recorder. The surveyor shall receive seven dollars (\$7) per day and actual traveling expenses.

History: En. Sec. 8-205, Ch. 197, L. 1965.

32-4006. Determination of damages—declaration as road. (1) Whenever the board makes an order establishing or changing any road, it must find the amount of damages sustained by each owner or claimant of lands or improvements thereon affected by the road. Damages shall be paid to the owner or claimant, if known, upon his showing or establishing his right or title to the lands or improvements and furnishing proper deeds and releases.

(2) Damages must be determined by estimating the benefits and damages accruing. The sum estimated as benefits must be deducted from the sum estimated as damages, and the remainder, if any, shall be the amount of damages awarded.

(3) If all awards are accepted, the board shall declare the road a county road and open it.

History: En. Sec. 8-206, Ch. 197, L. 1965.

32-4007. Award of damages deemed rejected—proceedings to secure right of way. (1) If any award of damages provided for in section 8-206 [32-4006] is not accepted within twenty (20) days after the date of the award, it shall be deemed rejected by the owner. The board shall, by order, direct that proceedings to procure the right of way be instituted under sections 93-9901—93-9926 by the county attorney against all nonaccepting landowners.

(2) Such proceedings shall in no way be affected or invalidated by the failure of the board to give any notice or do any act provided for in this part [chapter]. Failure to give any such notice shall not be considered by any court as a defense in any proceedings for procuring right of way.

(3) However, in such proceedings it shall be made to appear that the board shall have declared by resolution that the right of way was necessary and desirable.

History: En. Sec. 8-207, Ch. 197, L. 1965.

32-4008. Damages and expenses to be paid out of county road fund. All awards of damages estimated by the board or made by the proper court and all expenses, including those of the members of the board and their per diem authorized by section 16-912, shall be paid out of the county road fund on the order of the board.

History: En. Sec. 8-208, Ch. 197, L. 1965.

32-4009. Change of road upon petition. (1) A majority of the freeholders or owners residing on any county road, or portion thereof, may

petition the board in writing to so change the road or portion as to run on subdivision or section lines.

(2) The board shall investigate in the same manner as provided in section 8-204 [32-4004]. After investigation, the board may order the making of the change if it can be done without material damage, injury, or serious inconvenience to the public customarily using the road or portion.

(3) Those petitioning for the change shall bear all or such portion of the cost and expense of making it as the board may order.

History: En. Sec. 8-209, Ch. 197, L.
1965.

32-4010. Notice to district supervisor of opening of county road. When a county road is to be opened, established, constructed, changed, abandoned, or discontinued, the county clerk shall notify the supervisor of the proper district and furnish him with a certified copy of the order of the board.

History: En. Sec. 8-210, Ch. 197, L.
1965.

32-4011. Record of opening or changing road. When a county road is opened or changed, the findings of the board, the plat fieldnotes, and the report of the surveyor shall be recorded in the office of the county clerk in a book kept for that purpose.

History: En. Sec. 8-211, Ch. 197, L.
1965.

32-4012. Deeds and judgments for right of way—recording. (1) When a right of way is voluntarily given or purchased, an instrument in writing, conveying the right of way and incidents thereto, must be signed and acknowledged by the person making it. It must then be recorded in the office of the clerk of the county where the land is located.

(2) When a right of way is condemned, a certified copy of the judgment of the court must be made. It must then be filed in the office of the clerk of the county where the land is located.

(3) Both types of instruments shall particularly describe the land.

History: En. Sec. 8-212, Ch. 197, L.
1965.

32-4013. County road crossing railroad, canal or ditch. (1) Whenever any county road is laid out on public lands across any railroad, canal, or ditch, the owners or users thereof must at their expense, so prepare the railroad, canal, or ditch that the road may cross it without damage or delay.

(2) When the right to cross is obtained through the judgment of any court, no damages shall be awarded.

History: En. Sec. 8-213, Ch. 197, L.
1965.

32-4014. Abandonment or vacation of county roads. All county roads once established must continue to be county roads until abandoned or vacated by operation of law, or by judgment of a court of competent jurisdiction, or by the order of the board. No order to abandon any county road shall be valid unless preceded by notice and public hearing.

History: En. Sec. 8-214, Ch. 197, L. 1965.

32-4015. Stock lanes. [1] Upon presentation of a proper petition, each board may establish, alter, or vacate stock lanes when it deems it expedient and necessary for the convenience of the public and for the convenience of travel on roads now established. Any lane may adjoin and parallel a county road and shall be described in the petition for creation and in the order of the board creating it.

(2) A stock lane is a county road established and maintained for the driving and travel of livestock. It shall be not less than sixty (60) feet wide. The width shall be determined by the board in the order creating it.

(3) The provisions of sections 8-201—8-214 of this part [32-4001 to 32-4014 of this chapter] and the general laws relating to establishing, altering, and vacating county roads including the exercise of the right of eminent domain shall apply to stock lanes. References in all petitions, orders, and proceedings shall be to "stock lanes" in order to differentiate them from other highways.

History: En. Sec. 8-215, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed designation for subsection (1).

32-4016. Board to transfer responsibility for right of way. Each board shall transfer its control over, and responsibility for, any county road when the commission notifies it that: (1) A federal or state highway has been established and definitely located over a county road.

(2) Funds are available for immediate construction of the highway.

(3) The highway will be improved and maintained by the commission.

History: En. Sec. 8-216, Ch. 197, L. 1965.

32-4017. Acquisition of property for public ferries and wharves. (1) Upon the proper showing, as provided in section 16-1116, each board may construct or acquire ferries by condemnation or purchase. Each board may also acquire all the necessary boats, grounds, roads, approaches, landings, and improvements pertaining to the ferry.

(2) Each board may acquire real property for these purposes under the provisions of sections 93-9901—93-9926.

(3) No board shall establish or maintain a county ferry or wharf with a landing-place in any incorporated city or town which, by its charter, is vested with the power to build and regulate ferries, wharves, or landings at the feet of streets terminating at a river or harbor.

History: En. Sec. 8-217, Ch. 197, L. 1965.

32-4018. Acquisition of property for controlled access facility. The highway authorities of the state, counties, incorporated cities, and towns, respectively or in co-operation each with the other, may acquire private or public property and property rights for controlled access highways or controlled access facilities and service roads. Such rights may include rights of access, air, view, and light. They may be acquired by gift, devise, purchase, or condemnation, in the same manner as may now or hereafter be authorized by law for the acquisition of property or property rights in connection with highways, roads, and streets in their respective jurisdictions.

History: En. Sec. 8-218, Ch. 197, L. 1965.

CHAPTER 41—CONTRACTS OF STATE HIGHWAY COMMISSION

Section 32-4101. Letting of contracts on state and federal-aid highways.

32-4102. Competitive bidding.

32-4103. Bidder's security—contractor's bond.

32-4101. Letting of contracts on state and federal-aid highways. All contracts for work on state and federal-aid highways, including portions in cities and towns, and all contracts entered into under section 11-1023 shall be let by the commission. Except as otherwise specifically provided, the commission may enter such types of contracts and upon such terms as it may decide. All contracts shall meet the requirements of sections 41-701—41-703. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-101, Ch. 197, L. 1965.

designated as Chapter 9 of the Highway Code, entitled "Contracts." This chapter was designated as Part 1 of Chapter 9, entitled "Contracts of Commission."

Compiler's Note

Chapters 41 and 42 of this title were

32-4102. Competitive bidding. (1) When the estimated cost of any work exceeds one thousand dollars (\$1,000), the commission shall let the contract by competitive bidding. Award shall be made upon such notice and upon such terms as the commission may prescribe by its rules and regulations. However, except when prohibited by federal law, the commission must make awards and contracts in accordance with the provisions of sections 82-1924 and 82-1926.

(2) If the commission finds that such work may be done in some more efficient manner, it need not let the contract by competitive bidding.

(3) If, on any highway construction work financed in whole or in part by federal funds, the United States secretary of commerce affirmatively finds that under the circumstances relating to a particular project some method other than competitive bidding is in the public interest, the commission may enter into contracts with any board of county commissioners. Such contracts may authorize each county to acquire rights of way for, survey, and construct farm to market, secondary, or

feeder roads within the county by force account, unit price, or otherwise, as may be agreed by the commission and each board.

History: En. Sec. 9-102, Ch. 197, L. 1965.

32-4103. Bidder's security—contractor's bond. (1) Whenever the commission calls for competitive bidding, each bidder shall meet all requirements of section 6-501 [R. C. M., 1947].

(2) Every contractor awarded a contract by the commission shall meet all requirements set forth in sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the commission, a contract shall not be completed until the commission, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-103, Ch. 197, L. 1965.

Compiler's Note

The compiler has inserted the bracketed references to R. C. M., 1947.

CHAPTER 42—CONTRACTS OF COUNTIES AND LOCAL
IMPROVEMENT DISTRICTS

- Section 32-4201. Contracts for county roads.
32-4202. Bids on county road contracts—award of contract.
32-4203. County road contractors to furnish bonds.
32-4204. Letting of contract for bridge.
32-4205. Letting of contract by local improvement district—bids.
32-4206. Improvement district contract—award.
32-4207. Execution of contract by board—limit on liability.

32-4201. Contracts for county roads. (1) When the estimated cost of opening, establishing, constructing, changing, abandoning, discontinuing, or widening a county road exceeds one thousand dollars (\$1,000), the work may, in the discretion of the board, be let by contract, unless the board shall find that such work may be otherwise done at less cost.

(2) Before any such contract shall be let, the board shall advertise for bids at least once a week for two (2) consecutive weeks, in a newspaper of general circulation in the county.

History: En. Sec. 9-201, Ch. 197, L. 1965.

of Chapter 9 of the Highway Code, entitled "Contracts of Counties and Local Improvement Districts."

Compiler's Note

This chapter was designated as Part 2

32-4202. Bids on county road contracts—award of contract. Each bidder shall comply with the requirements of section 6-501 [R. C. M., 1947]. The contract shall be awarded to the lowest responsible bidder in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926, and the board may reserve the right to reject any and all bids. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract.

History: En. Sec. 9-202, Ch. 197, L.
1965.

Compiler's Note

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4203. County road contractors to furnish bonds. Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-203, Ch. 197, L.
1965.

32-4204. Letting of contract for bridge. (1) All bids for construction or repair of bridges shall meet these requirements:

(a) If the commission has adopted or established a standard plan and specifications, the bids must be submitted thereon.

(b) All bids must be sealed. Each bidder shall meet the requirements of section 6-501 [R. C. M., 1947].

(2) The board may reject any and all bids. If a contract is awarded, the board shall do so in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the board shall determine the prevailing rate to be stated in the contract. The contract must be entered with the unanimous consent of the members of the board.

(3) Before entering upon performance of the work, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the board, a contract shall not be completed until the board, while formally convened, affirmatively accepts all of the work thereunder.

History: En. Sec. 9-204, Ch. 197, L.
1965.

Compiler's Note

The compiler has inserted the bracketed references to R. C. M., 1947.

32-4205. Letting of contract by local improvement district—bids. (1) After the board has made the order creating and establishing the local improvement district, the local committee of supervisors shall advertise for bids. The advertisement shall state generally the work to be done and shall refer to the plans and specifications. It shall also fix the time for opening bids in the office of the board. Each bidder shall meet the requirements of section 6-501 [R. C. M., 1947].

(2) At that time, the committee shall open all bids. It may reject all of them and readvertise for bids. No contract shall be awarded at a greater sum than the estimate of cost provided for in part 4 of chapter 5 of this code [chapter 31 of this title].

History: En. Sec. 9-205, Ch. 197, L.
1965.

Compiler's Note

The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4206. Improvement district contract—award. (1) If the committee awards a contract, it shall do so in accordance with the requirements of sections 41-701—41-703, 82-1924, and 82-1926. When there is no prevailing rate of wages set by collective bargaining, the committee shall determine the prevailing rate to be stated in the contract.

(2) Before entering upon performance of the contract, the contractor shall comply with the requirements of sections 6-401—6-404 [R. C. M., 1947]. For the purposes of those sections with relation to contracts with the committee, a contract shall not be completed until the committee, while formally convened, affirmatively accepts all of the work thereunder.

(3) Partial payments may be provided for in the contract, and paid when certified by the county surveyor and committee.

History: En. Sec. 9-206, Ch. 197, L. 1965.

Compiler's Note
The compiler has inserted the bracketed reference to R. C. M., 1947.

32-4207. Execution of contract by board—limit on liability. The contract shall be executed in the name of and on behalf of the county by the board and attested with the county seal for the use and benefit of the local improvement district. The county shall not be subject to any claim or liability in an amount greater than that agreed upon with the district in the order fixing the amount chargeable to the county.

History: En. Sec. 9-207, Ch. 197, L. 1965.

CHAPTER 43—CONTROL OF ACCESS

- Section 32-4301. Policy.
 32-4302. Definitions.
 32-4303. Designation as controlled access highway—resolution—findings.
 32-4304. Designation as controlled access highway—petition from city or county.
 32-4305. Powers of highway authorities.
 32-4306. Design of controlled access facility—entrance and exit restricted.
 32-4307. New and existing facilities—elimination of grade crossings.
 32-4308. Existing roads and streets as service roads.
 32-4308.1. Maintenance of frontage roads.
 32-4309. Marking of controlled access highway or facility with signs.
 32-4310. Commercial enterprise or structure prohibited.
 32-4311. Violations—penalties.

32-4301. Policy. The legislative assembly declares it to be the policy of this state to facilitate the flow of traffic and promote public safety by controlling access to: (1) Highways included by the bureau of public roads in the national system of interstate highways.

(2) Throughways and intersections with throughways.

(3) Such other federal-aid and state highways as shall be designated by the commission in accordance with the requirements set forth in this chapter.

History: En. Sec. 10-101, Ch. 197, L. 1965.

Compiler's Note
This chapter was designated as Chapter 10 of the Highway Code, entitled "Control of Access."

DECISIONS UNDER FORMER LAW

Judicial Determination of Necessity

In adopting the former controlled access highway law (32-2001 et seq.) the legislature is presumed to have considered sections 93-9905 and 93-9911 R. C. M.

1947, and the power to determine the public necessity of a proposed highway or facility remains with the trial judge. *State Highway Commission v. Yost Farm Co.*, 142 M 239, 384 P 2d 277.

32-4302. Definitions. When used in this chapter: (1) "Interstate highway" means any highway now included or which shall hereafter be included as a part of the National System of Interstate Highways.

(2) "Controlled access highway" means all portions of any interstate highway, throughway, or throughway intersection which the commission shall determine and designate for through traffic, or other federal-aid or state highway over, from or to which owners or occupants of abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view. It shall also mean those portions of spurs to the interstate highway system which the commission shall determine and designate as unsafe or impeded by unrestricted access of traffic from intersecting streets or alleys or public or private roads or ways of passage.

(3) "Controlled access facility" means and includes all streets, alleys, public roads, private roads, and ways of passage intersecting any controlled access highway and all real property contiguous to the right of way of any controlled access highway.

(4) "Existing highway" means and includes all highways, roads, and streets established constructed, and in use on March 2, 1955. It shall not include highways, roads, or streets, established, constructed, and in use after that date, or highways, roads, or streets, or portions thereof relocated after that date.

(5) "Arterial highway" means any state highway designated by agreement between the commission and the secretary of commerce as part of the federal-aid primary system and any highway so designated as a part of the federal-aid secondary system which has been constructed and is being used primarily for through traffic on a continuous route.

(6) "Throughway" means any portion of an arterial highway constructed and used for carrying traffic partially or entirely around a town or city or a portion thereof.

(7) "Throughway intersection area" means an area within a radius of three hundred (300) feet from the point of intersection of the center lines of a throughway and any public road, street, or highway.

(8) "Highway authorities" or "authority" means the entities in state, county, and municipal governments which have authority to construct, repair, and maintain highways, roads, and streets.

History: En. Sec. 10-102, Ch. 197, L. 1965.

32-4303. Designation as controlled access highway—resolution—findings. (1) No portion of any interstate highway, throughway or throughway intersection, or other federal-aid or state highway shall be designated

as a controlled access highway unless the commission shall adopt a resolution so designating it. The resolution shall be adopted by the majority vote of the members in attendance at any regular or special meeting. In it, the commission shall find and determine:

(a) That it is necessary and desirable that the owners or occupants of the abutting land or other persons shall have no easement of access or only a limited easement of access, light, air, or view.

(b) That it is necessary and desirable that the rights of, or easements to access, light, air, or view be acquired by the state so as to prevent such portion of highway from becoming unsafe for or impeded by unrestricted access of traffic from intersecting streets, alleys, public or private roads or ways of passage.

(2) The resolution shall contain a statement of the reasons for its adoption, and shall set forth the location, distance, and termini of the portion of the highway designated as a controlled access highway.

History: En. Sec. 10-103, Ch. 197, L. 1965; amd. Sec. 1, Ch. 215, L. 1969.

ment by the United States that access must be controlled shall be a basis of necessity for the passing of the resolution" and renumbered former subsection (3) as subsection (2).

Amendments

The 1969 amendment deleted former subsection (2) which read, "The require-

32-4304. Designation as controlled access highway—petition from city or county. (1) No portion of a throughway or throughway intersection, or other federal-aid or state highway within the limits of an incorporated city or town shall be designated a controlled access highway except upon petition in writing from its governing body.

(2) If the portion lies wholly or partially outside of any such corporate limits, the petition must come from the board of the county within which the portion is located.

(3) Any such petition, once filed with the commission, shall be irrevocable unless the commission concurs in a request to revoke it.

History: En. Sec. 10-104, Ch. 197, L. 1965.

32-4305. Powers of highway authorities. (1) Those authorities of the state, counties, and municipalities authorized to participate in construction and maintenance of highways may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide controlled access facilities for public use. Each such authority shall, by resolution, make the findings and determinations provided for in section 10-103 [32-4303] of this chapter.

(2) Within incorporated cities and towns, and upon county roads, each authority shall be subject to the consent of the appropriate governing body.

(3) Each authority may also exercise, with relation to controlled access facilities, any and all additional authority now or hereafter vested in it over highways, roads, or streets within its respective jurisdiction.

It may regulate, restrict, or prohibit the use of controlled access facilities by any vehicles or traffic.

History: En. Sec. 10-105, Ch. 197, L. 1965.

32-4306. Design of controlled access facility—entrance and exit restricted. (1) Each highway authority may so design any controlled access facility and so regulate, restrict, or prohibit access as to best serve the traffic for which the facility is intended. In so doing, it may divide and separate any controlled access facility into separate roadways by the construction of raised curbsings, central dividing sections, or other physical separations, or by designating the separate roadways by signs, markers, stripes, and other devices.

(2) No person shall have any right to enter upon, exit from, or cross any controlled access facility except at designated points at which access may be permitted. Terms and conditions governing such access may be specified from time to time.

History: En. Sec. 10-106, Ch. 197, L. 1965.

32-4307. New and existing facilities—elimination of grade crossings.

(1) Each highway authority may provide for elimination of intersections at grade of controlled access highways or controlled access facilities with existing federal-aid and state highways, county roads, and city or town streets. Elimination shall be accomplished at the boundary of the controlled access right of way.

(2) After the establishment of any controlled access highway or facility, no private or public highway or street which is not a part of the highway or facility shall intersect it at grade. No street, road, highway, or other public way shall be opened into or connected with any controlled access highway or facility without the prior consent and approval of the appropriate highway authority.

(3) The commission may, whenever it determines that the public safety is not thereby impaired, authorize the continued intersection at grade of lightly traveled farm entrances and minor public roads as ways of access to controlled access highways in sparsely populated rural areas. The commission shall have sole jurisdiction to determine the existence and location of any intersection with interstate highways, throughways and other federal-aid and state highways.

History: En. Sec. 10-107, Ch. 197, L. 1965.

32-4308. Existing roads and streets as service roads. (1) In connection with the development of any controlled access highway or facility, each highway authority may plan, designate, establish, use, regulate, alter, improve, maintain, and vacate local service roads and streets. Each authority may designate as local service roads and streets any existing road or street.

(2) Service roads and streets shall be of appropriate design. They shall be separated from the controlled access highway or facility by means of all devices determined to be necessary to carry out the provisions of this chapter.

(3) Each authority shall exercise jurisdiction over service roads and streets in the same manner as is authorized over controlled access highways or facilities.

History: En. Sec. 10-108, Ch. 197, L. 1965.

32-4308.1. Maintenance of frontage roads. All frontage roads shall be maintained by the state highway commission of the state of Montana.

History: En. Sec. 1, Ch. 90, L. 1965. **Title of Act**

Compiler's Notes

This section was assigned inadvertently to Chapter 20 of Title 32 prior to repeal of Chapter 20 by Sec. 12-109, Ch. 197, L. 1965.

An act to provide for maintenance of frontage roads and amending section 32-2002 to define "frontage road."

32-4309. Marking of controlled access highway or facility with signs. Any controlled access highway or facility and portions thereof shall be physically marked by signs indicating to drivers of vehicles the points at which they enter and leave a controlled access area.

History: En. Sec. 10-109, Ch. 197, L. 1965.

32-4310. Commercial enterprise or structure prohibited. No commercial enterprise or structure shall be constructed or operated on the publicly owned right of way of a controlled access highway or facility or on any publicly leased land used in connection therewith.

History: En. Sec. 10-110, Ch. 197, L. 1965.

32-4311. Violations—penalties. (1) On any controlled access highway or facility it is unlawful for any person to:

(a) Drive a vehicle over, upon, or across any curb, central dividing section, or other separation or dividing line.

(b) Make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, section, separation, or line.

(c) Drive any vehicle except in the proper lane, in the proper direction, and to the right of the central dividing curb, separation, section or line.

(d) Drive any vehicle from a local service road except through an opening provided for that purpose in the dividing curb, section, or line which separates the service road from the highway or facility.

(e) Construct, operate, or maintain any road or private driveway connecting with the highway or facility without first obtaining permission in writing from the highway authority having jurisdiction and, with the exception of an interstate highway, from the local governing body.

(2) Any person who violates any of the provisions of this section is guilty of a misdemeanor. Upon arrest and conviction therefor, he shall be punished by a fine of not less than five dollars (\$5) nor more than one hundred dollars (\$100), or by imprisonment in the city or county jail for not less than five (5) days nor more than ninety (90) days, or by both fine and imprisonment.

History: En. Sec. 10-111, Ch. 197, L. 1965.

CHAPTER 44—GOOD ROADS DAY—OBSTRUCTIONS, ENCROACHMENTS AND DEBRIS ON HIGHWAYS

- Section 32-4401. Good Roads day.
 32-4402. Injuries to highways and trees.
 32-4403. Excavations across highways—permits and bridging.
 32-4404. Liability for permitting water to overflow.
 32-4405. Highway encroachments—power to remove.
 32-4406. Notice to remove encroachment.
 32-4407. Penalty for failure to remove encroachment promptly.
 32-4408. Removal of encroachment—actions—prosecution of offenses.
 32-4409. Prosecution by county attorney.
 32-4410. Dumping garbage or other debris or refuse.

32-4401. Good Roads day. The third Tuesday in June is hereby designated "Good Roads day." The governor may annually, by public proclamation, request the people of the state to contribute toward the improvement and safety of public highways.

History: En. Sec. 11-101, Ch. 197, L. 1965.

Compiler's Note

This chapter was designated as Chapter 11 of the Highway Code, entitled "Miscellaneous."

32-4402. Injuries to highways and trees. (1) The malicious injury of any highway, bridge, private way, or guidepost or inscription thereon is punishable as provided in sections 94-3201 and 94-3202.

(2) Every person who, without authority, cuts down, or otherwise maliciously injures or destroys any shade or ornamental tree on any highway is punishable as provided in section 94-3202 (2).

History: En. Sec. 11-102, Ch. 197, L. 1965.

Compiler's Note

Section 94-3201, referred to at the end of subsection (1) of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

32-4403. Excavations across highways—permits and bridging. (1) (a) Any person contemplating the excavation or construction of any ditch, dike, flume or canal across a public highway shall obtain a written permit from the board of county commissioners, road supervisor or county surveyor of said district before beginning construction or excavation.

(b) Any person obtaining said written permit shall bridge at once, in accordance with plans and specifications furnished by the board of county commissioners.

(2) Any such bridge shall be maintained by the county.

(3) Any person obtaining a construction permit or any person using the water of such ditch, dike, flume or canal shall keep the same in repair where such water may flow over or in any way injure a public highway.

History: En. Sec. 11-103, Ch. 197, L. 1965.

32-4404. Liability for permitting water to overflow. (1) Every person who excavates or constructs or owns any ditch, dike, flume or canal, or stores, distributes or uses water for any purpose and permits the water to flow over any public highway to the injury thereof, must upon notification by the board of county commissioners, road supervisor or county surveyor of the district where such overflow occurred, repair the damages occasioned. If such repairs are not made within a reasonable time, the district must make them and recover the expense thereof in an action at law.

(2) Every person constructing, owning or using such ditch or flume who permits an overflow is liable as provided in section 94-3565.

History: En. Sec. 11-104, Ch. 197, L. 1965.

32-4405. Highway encroachments—power to remove. (1) If any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor must immediately remove the same.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

History: En. Sec. 11-105, Ch. 197, L. 1965.

32-4406. Notice to remove encroachment. (1) Notice to remove the encroachment immediately, specifying the breadth of the highway and the place and extent of the encroachment, must be given to the occupant or owner of the land or person owning or causing the encroachment.

(2) Notice must be given in the following manner:

(a) By leaving it at his place of residence if such person resides in the county; or

(b) By posting it on the encroachment, if such person does not reside in the county.

History: En. Sec. 11-106, Ch. 197, L. 1965.

32-4407. Penalty for failure to remove encroachment promptly. If the encroachment is not removed immediately, or removal is not dili-

gently conducted, the one who causes, owns, or controls the encroachment is liable to a penalty of ten dollars (\$10) for each day the same continues.

History: En. Sec. 11-107, Ch. 197, L. 1965.

32-4408. Removal of encroachment—actions—prosecution of offenses.

(1) If the encroachment is denied, the road supervisor shall commence in the proper court an action to abate the same as a nuisance. If he recovers judgment, he may have his costs and ten dollars (\$10) for every day such nuisance remained after notice.

(2) If the encroachment is not denied, and is not removed for five (5) days after notice is complete, the road supervisor or county surveyor may remove it at the expense of the owner or occupant of land, or of the person owning or controlling the encroachment. He may recover the expense of removal, ten dollars (\$10) for each day the encroachment remained after notice, and costs in an action brought for that purpose.

History: En. Sec. 11-108, Ch. 197, L. 1965.

32-4409. Prosecution by county attorney. The county attorney, upon complaint of the road supervisor, county surveyor, or any other person, shall prosecute all actions heretofore provided in the name of the state of Montana. All penalties shall be paid into the general fund of the county.

History: En. Sec. 11-109, Ch. 197, L. 1965.

32-4410. Dumping garbage or other debris or refuse. (1) It shall be unlawful to dump or leave any garbage, dead animal, or other debris or refuse:

(a) In or upon any highway, road, street, or alley of this state.

(b) In or upon any public recreational property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof, or any officer or agent or department thereof.

(c) Within two hundred yards of such public highway, road, street, or alley, or public recreational property.

(d) On privately owned property where hunting, fishing or other recreation is permitted, provided this subsection shall not apply to the owner, his agents or those disposing of debris or refuse with the owner's consent.

(2) Any person found guilty of a violation of this section shall be fined in the sum not exceeding one hundred dollars (\$100), or imprisoned in the county jail for a period not exceeding thirty (30) days, or be punished by both such fine and imprisonment, in the discretion of the court.

(3) The provisions of this section shall be enforced by all highway patrolmen, sheriffs, policemen, and all other enforcement agencies and officers of the state of Montana. In addition, game wardens shall have

the right to enforce the provisions of this section on public recreational property and on private property where public recreation is permitted.

History: En. Sec. 11-110, Ch. 197, L. 1965; amd. Sec. 1, Ch. 112, L. 1969.

Amendments

The 1969 amendment added subdivision (d) to subsection (1); in subsection (2)

increased the maximum fine from \$25.00 to \$100.00; and, in subsection (3), authorized game wardens to enforce anti-littering provisions on private property where public recreation is permitted, as well as on public recreational property.

CHAPTER 45—JUNKYARDS ALONG ROADS

Section 32-4513. Purposes of act.

32-4514. Definitions.

32-4515. License required.

32-4516. Issuance of license—fee—term—renewal.

32-4517. Restrictions as to location.

32-4518. Junkyards lawfully in existence.

32-4519. Regulations governing screening.

32-4520. Authority to acquire interest in land for screening and removal of junkyards.

32-4521. Injunction.

32-4522. Agreements with the United States.

32-4523. Interpretation.

32-4501 to 32-4512. Repealed.

Repeal

These sections (Secs. 1 to 12, Ch. 136, L. 1965), relating to the regulation of

junkyards along roads, were repealed by Sec. 13, Ch. 285, Laws 1967.

32-4513. Purposes of act. (1) For the purposes of promoting the public safety, health and welfare, and the convenience and enjoyment of public travel, to protect the public investment in public highways, and to preserve and enhance the scenic beauty of lands bordering public highways, it is hereby declared to be in the public interest to regulate and restrict the establishment, operation and maintenance of junkyards in areas adjacent to the interstate and primary systems within this state.

(2) The legislative assembly hereby finds and declares that junkyards which do not conform to the requirements of this act are public nuisances.

History: En. Sec. 1, Ch. 285, L. 1967.

Title of Act

An act providing for the control of junkyards; setting forth definition; restricting location along certain highways; requiring an annual license and fee; re-

quiring certain junkyards to be obscured by means of natural objects or fences; providing authority to purchase or condemn in certain situations; providing penalties for violation; and repealing sections 32-4501 through 32-4512, Revised Codes of Montana, 1947.

32-4514. Definitions. As used in this act only:

(1) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated by the state highway commission and approved by the secretary of transportation pursuant to the provisions of title 23, United States Code, "Highways."

(2) "Primary system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the commission and approved by the secretary of transportation, pursuant to the provisions of title 23, United States Code, "Highways."

(3) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel and other old or scrap ferrous or nonferrous material.

(4) "Junkyard" means any establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling junk; or for the maintenance or operation of an automobile graveyard; or a garbage dump or sanitary fill.

(5) "Automobile graveyard" means any establishment or place of business which is maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

History: En. Sec. 2, Ch. 285, L. 1967.

32-4515. License required. No person shall establish, operate or maintain a junkyard, any portion of which is within one thousand (1,000) feet of the nearest edge of the right of way of any interstate or primary highway, without obtaining a license from the commission.

History: En. Sec. 3, Ch. 285, L. 1967.

32-4516. Issuance of license—fee—term—renewal. The commission shall have the sole authority to issue licenses for the establishment, maintenance and operation of junkyards within the limits herein defined. It shall charge for each such license a fee of twenty-five dollars (\$25) payable annually in advance. All licenses issued under this section shall expire on the January 1, following the date of issue. A license may be renewed from year to year upon paying to the commission the sum of twenty-five dollars (\$25) for such renewal. Proceeds from all license fees shall be deposited in the earmarked revenue fund to the credit of the state highway commission and be subject to disbursement on the order of the commission to defray the expense of administering the provisions of this act.

History: En. Sec. 4, Ch. 285, L. 1967.

32-4517. Restrictions as to location. No license shall be granted for the establishment, maintenance or operation of a junkyard within one thousand (1,000) feet of the nearest edge of the right of way of any highway on the interstate or primary systems except the following:

(1) Those which are screened by natural objects, planting, fences or other appropriate means so as not to be visible from the main traveled way of any such highway, or otherwise removed from sight.

(2) Those located within areas which are zoned for industrial use under authority of law.

(3) Those located within unzoned industrial areas, which areas shall be determined from actual land uses and defined by regulations to be promulgated by the commission.

(4) Those which are not visible from the main traveled way of any such highway.

History: En. Sec. 5, Ch. 285, L. 1967.

32-4518. Junkyards lawfully in existence. (1) Any junkyard lawfully in existence on the effective date of this act which is within one thousand (1,000) feet of the nearest edge of the right of way and visible from the main traveled way of any highway on the interstate or primary systems shall be fenced or screened, if feasible, by the commission at locations on the highway right of way or in areas acquired for such purposes outside the right of way so as not to be visible from the main traveled way of any such highway.

(2) Notwithstanding any other provision of this act, any junkyard lawfully in existence on October 22, 1965, which does not conform to the requirements of this act and which the United States secretary of transportation finds as a practical matter cannot be screened, shall not be required to be removed until July 1, 1970.

History: En. Sec. 6, Ch. 285, L. 1967.

32-4519. Regulations governing screening. The commission may promulgate rules governing the materials to be used in, and the location, planting, construction and maintenance of screening or fencing required by this act.

History: En. Sec. 7, Ch. 285, L. 1967.

32-4520. Authority to acquire interest in land for screening and removal of junkyards. (1) When the commission determines that it is in the best interests of the state, it may acquire such lands or interests in lands as may be necessary to provide adequate screening.

(2) When the commission determines that the topography of the land adjoining the highway will not permit adequate or economically feasible screening, it may acquire by gift, purchase, exchange or condemnation such interests in lands as may be necessary to secure the relocation, removal or disposal of junkyards which were either:

(a) Lawfully in existence on October 22, 1965; or

(b) Lawfully along any highway made a part of the interstate or primary systems on or after October 22, 1965, and before January 1, 1968; or

(c) Lawfully established on or after January 1, 1968.

(3) The commission shall pay just compensation to the owner for the relocation, removal or disposal of any such junkyard.

History: En. Sec. 8, Ch. 285, L. 1967.

32-4521. Injunction. The commission may apply to the district court for the county in which is located any junkyard not conforming to the requirements of this act for an injunction to abate such nuisance.

History: En. Sec. 9, Ch. 285, L. 1967.

32-4522. Agreements with the United States. The commission may enter into agreements with the United States secretary of transportation as provided in title 23, United States Code, relating to the control of junkyards in areas adjacent to the interstate and primary systems, and take action in the name of the state to comply with the terms of such agreements.

History: En. Sec. 10, Ch. 285, L. 1967.

32-4523. Interpretation. Nothing in this act shall be construed to abrogate or affect the provisions of any lawful ordinance, regulation or resolution which are more restrictive than the provisions of this act.

History: En. Sec. 11, Ch. 285, L. 1967.

Separability Clause

Section 12 of Ch. 285, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or

more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 13 of Ch. 285, Laws 1967 read "Sections 32-4501 through 32-4512, Revised Codes of Montana, 1947, are repealed."

CHAPTER 46—TRAFFIC SAFETY PROGRAM

Section 32-4601. Purpose of act.

32-4602. Definitions.

32-4603. Montana highway traffic safety board.

32-4604. Organization.

32-4605. Duties.

32-4606. Funds.

32-4607. Local programs.

32-4601. Purpose of act. For the purpose of promoting the public safety, health and welfare, and to reduce traffic deaths, injuries and property losses resulting from traffic accidents, it is hereby declared to be in the public interest to establish a highway traffic safety program; provide for the administration thereof; implement, modernize and improve the following traffic safety activities: driver performance, including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles; driver examinations, both physical and mental; driver licensing; pedestrian performance; establish an effective accident record system, including traffic accident investigation to determine the probable cause of accidents, injuries and deaths; to improve and establish a system of vehicle registration, vehicle operation and vehicle inspection; to assist in the improving of highway design and maintenance, including lighting, markings and surface treatment to improve safety thereof; establish an effective traffic control system; promote the adoption of a uniform vehicle code and law; provide for surveillance of traffic for detection and correction of high or potentially high accident locations; establish emergency services, including, but not limited to, communications, medical or mechanical assistance, and ambulance service for injured persons; establish an effective compilation and storage program of reports and records through electronic data processing.

History: En. Sec. 1, Ch. 177, L. 1967.

Title of Act

An act for the establishment of a state highway traffic safety program, setting forth definitions; establishing administration thereof, authorizing political subdivision participation, permitting the acceptance of federal funds, the collection and expenditure of monies; providing for

programs for driver education training and certification of instructors, regulation of schools including licensing thereof; adult driver training and retraining programs; research, development and procurement of practice driving facilities, simulators and teaching aids, licensing, revocation and regulation of drivers and operators of all motor vehicles.

32-4602. Definitions. (1) As used in this act, "governor" shall mean the governor of the state of Montana.

(2) "Highway traffic safety program" means a program designed to reduce traffic accidents and deaths, injuries to persons and damage to property. Such program shall be in accordance with uniform standards as are or may be established by the secretary of commerce of the United States under title 23, United States Code Annotated, as amended. Nothing herein shall restrict or prohibit the establishment of standards which enlarge or implement the federal standards.

(3) "Political subdivisions" shall mean every county, incorporated city or town and school district within the boundaries of the state.

(4) "Board" shall mean the Montana highway traffic safety board.

History: En. Sec. 2, Ch. 177, L. 1967.

32-4603. Montana highway traffic safety board. There is hereby created a Montana highway traffic safety board. The board shall be appointed by the governor.

History: En. Sec. 3, Ch. 177, L. 1967.

32-4604. Organization. The Montana highway traffic safety board shall meet once each month at the state capitol. It shall provide for office space, clerical help and such other personnel as may be necessary to carry out the intent of this act.

History: En. Sec. 4, Ch. 177, L. 1967.

32-4605. Duties. The governor shall be responsible for the administration of the highway traffic safety program. The governor, in addition to other duties and responsibilities conferred upon him by the constitution and laws of this state, is hereby empowered to contract and to do all other things necessary to secure the full benefits available to this state under the Federal Highway Safety Act of 1966, and in so doing, to co-operate with federal and state agencies, private and public organizations, and with individuals, to effectuate the purposes of that enactment, and any and all subsequent amendments thereto. For purposes of participation in the Federal Highway Safety Act of 1966, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of such programs, certification of teachers, and the acceptance, allocation and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this act shall interfere with the provisions of chapter 51 or chapter 53 of Title 75, Revised Codes of Montana, 1947.

It shall be the duty of the board to advise and assist the governor in all matters of highway safety, and to establish comprehensive training programs, including, but not limited to, establishment and regulation of driver training schools and certification of said schools and instructors; establishment of adult training and retraining programs; to develop and procure practice driving facilities, simulators and other teaching aids for school and driver training use; to establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention; to establish a uniform system of driver licensing, including, but not limited to, mental and physical standards, and to prescribe and establish safety regulations for motor vehicles and operators.

History: En. Sec. 5, Ch. 177, L. 1967.

1966, referred to in this section, is compiled as sections 401 to 404 of Title 23, United States Code.

Compiler's Notes

The Federal Highway Safety Act of

32-4606. Funds. The governor and the highway traffic safety board is hereby authorized to enter into contracts with the federal government to secure maximum federal appropriation. At least forty per cent (40%) of all federal funds received by the state shall be expended by the political subdivisions of said state in carrying out local approved highway traffic safety programs. Except as provided in this act, the governor is authorized to accept all gifts, money and funds to implement the purposes of this act; the expenditure of funds, exclusive of the federal appropriation, shall be maintained at a level which shall not fall below the average level of such expenditures for the last two (2) full fiscal years preceding July 1, 1966, as determined by the expenditures of state and political subdivisions.

History: En. Sec. 6, Ch. 177, L. 1967.

32-4607. Local programs. Except as provided in this act, all highway traffic safety programs of political subdivisions must be approved by the governor and no funds shall be expended unless such approval is obtained. All local and state officials are hereby instructed and directed to co-operate with the governor and highway traffic safety board to accomplish the purposes of this act. The governor is hereby empowered to administer the highway traffic safety programs of this state and those of its political subdivisions, all in accordance with this act and federal rules and regulations in the implementation thereof.

History: En. Sec. 7, Ch. 177, L. 1967.

tional or void, the remainder of this act shall continue in full force and effect."

Separability Clause

Section 8 of Ch. 177, Laws 1967 read "The provisions of this act shall be severable; and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitu-

Repealing Clause

Section 9 of Ch. 177, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 47—ZONING AND ADVERTISING REGULATION
ALONG HIGHWAYS

- Section 32-4701. Declaration of policy.
 32-4702. Definitions.
 32-4703. Limitations on outdoor advertising.
 32-4704. Areas hereby zoned commercial.
 32-4705. Unzoned areas.
 32-4706. Regulations—customary usages.
 32-4707. Permits.
 32-4708. Removal of nonconforming signs.
 32-4709. Compensation for removal of signs.
 32-4710. Unlawful advertising.
 32-4711. Enforcement.
 32-4712. Agreements with the United States.
 32-4713. Guarantee against loss of funds.
 32-4714. Congressional action or nonaction.

32-4701. Declaration of policy. The legislature recognizing the public investment in highways and in justification of these expenditures, particularly the cost of maintenance which is borne wholly by state funds, finds and declares that it is necessary to promulgate a public policy of state zoning with uniform application adjacent to the interstate and primary systems within this state to promote their maximum utilization by encouraging the development of roadside businesses to serve the needs and pleasures of the traveling public, as well as to stimulate tourism, commerce, and for purposes of planning the general growth of the state's economy. Further, desiring to insure reasonable compliance with the Highway Beautification Act of 1965, it is the intention of the legislature in this act to provide a statutory basis for the regulation of outdoor advertising consistent with the public policy relating to areas adjacent to the interstate and primary systems as declared herein and by congress in title 23, United States Code, "Highways."

History: En. Sec. 1, Ch. 287, L. 1967.

Compiler's Notes

The Highway Beautification Act of 1965, referred to in the second sentence of this section, is compiled as sections 131, 136, and 319 of Title 23, United States Code.

Title of Act

An act to provide for the zoning by the legislature of certain lands adjacent to the interstate and primary system highways as commercial and for zoning and rezoning in certain cases by the boards

of county commissioners, or through their authority in accordance with presently existing or hereafter enacted statutes; to provide that the zoning hereby effected shall not, in itself, affect any taxes levied against real property or any assessment or assessment classification; to provide for the control of outdoor advertising adjacent to the interstate and primary systems; to provide for the administration of such outdoor advertising controls; all in conformity with the Federal Highway Beautification Act of 1965; and containing a severability clause.

32-4702. Definitions. As used in this act:

(a) "Interstate system" means that portion of the national system of interstate and defense highways located within this state, as officially designated, or as may hereafter be so designated, by the state highway commission, and approved by the secretary of commerce or secretary of transportation, pursuant to the provisions of title 23, United States Code.

(b) "Primary system" means that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the state highway commission, and approved by the secretary of com-

merce or secretary of transportation, pursuant to the provisions of title 23, United States Code.

(c) "Sign" or "outdoor advertising" means an outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing which is designed, intended or used to advertise or inform, any part of the advertising or informational contents of which is visible from any place on the main-traveled way of the interstate or primary systems.

(d) "Erect" means to place, construct, create, or bring into being a sign, display or device, but does not include changing copy upon, or the repair or replacement of, an existing legal sign, display or device.

(e) "Maintain" means to allow to exist.

(f) "Unzoned commercial or industrial area" means an area as defined and determined under section 5 [32-4705].

(g) "Municipality" means an incorporated city, town or village, but does not include counties, townships, or other rural areas.

History: En. Sec. 2, Ch. 287, L. 1967.

32-4703. Limitations on outdoor advertising. Subject to the provisions for the removal of nonconforming signs and the payment of just compensation therefor, contained in sections 8 and 9 [32-4708 and 32-4709] herein, no sign shall, after January 1, 1968, be erected or maintained within six hundred sixty (660) feet of the nearest edge of the right of way and visible from the main-traveled way of any highway which is a part of the interstate or primary system in this state, except the following:

(a) Official signs, including informational or directional signs regarding telephone service, emergency telephone signs, buried or underground cable markers, above ground cable closures, and directional signs and notices, which shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, as authorized or required by law, subject to national standards to be promulgated by the secretary of commerce or the secretary of transportation.

(b) Signs advertising the sale or lease of property upon which they are located.

(c) Signs advertising activities conducted, services rendered, goods sold, stored, produced or mined, or the name of the enterprise on the property upon which they are located.

(d) Signs in areas which are now or hereafter zoned industrial, commercial, or the like, under section 4 [32-4704] or otherwise, subject to the regulations set forth in section 6 [32-4706] concerning size, lighting and spacing.

(e) Signs in unzoned commercial or industrial areas, which now or hereafter qualify as such, as defined in, and determined under section 5 [32-4705], subject to the regulations set forth in section 6 [32-4706] concerning size, lighting and spacing.

History: En. Sec. 3, Ch. 287, L. 1967.

32-4704. Areas hereby zoned commercial. (a) The legislature, to the extent hereinafter provided, and to effectuate the declared purposes of this act, hereby zones all of the following described lands located outside of

municipalities and lying within six hundred sixty (660) feet of the nearest edge of the right of way of any highway which is part of the interstate and primary system, as commercial, effective as of the effective date of this act:

(1) For a distance of ten (10) miles directly along, and without deviation from, the routes thereof outside of and beyond the corporate limits of municipalities of the first class as defined in section 11-201, R.C.M. 1947;

(2) For a distance of five (5) miles directly along, and without deviation from, the routes thereof outside of and beyond the corporate limits of municipalities of the second class as defined in section 11-201, R.C.M. 1947;

(3) For a distance of five (5) miles directly along, and without deviation from, the routes thereof outside of and beyond the corporate limits of municipalities of the third class as defined in section 11-201, R.C.M. 1947;

(4) For a distance of three (3) miles directly along, and without deviation from, the routes thereof outside of and beyond the corporate limits of municipalities classified as towns in section 11-201, R.C.M. 1947;

(5) For a distance of three (3) miles directly along, and without deviation from, the routes thereof outside of and beyond the limits of unincorporated cities or towns.

(6) For a distance of five (5) miles outside of and beyond the intersection of said highways, or of the intersections of said highways with state secondary system highways, directly along, without deviation from, the routes of all such highways from the point of intersection; and

(7) For a distance of five (5) miles directly along and without deviation from, any interstate highway in both directions from any interchange located thereon.

The zoning, which is effected hereby, is subject to the exceptions specified in subsection (b) and to zoning by the several boards of county commissioners, or under their authority, as provided in subsection (e).

(b) Lands not so zoned. No lands are hereby zoned commercial, as aforesaid, which are:

(1) Within five hundred (500) feet of any building used primarily as a residence, unless the owner of the building consents in writing to the particular commercial use or uses to be made of such lands;

(2) In, or within five hundred (500) feet of, any official park, garden, or forest preserve, publicly owned, controlled, and maintained, or within five hundred (500) feet of a church or school;

(3) In, or within five hundred (500) feet of, any officially designated historical battlefield, or within five hundred (500) feet of any museum, publicly owned, controlled and maintained;

(4) In, or within five hundred (500) feet of, any official picnic grounds or swimming beach, publicly owned, controlled, and maintained, or any golf course, publicly or privately owned or maintained;

(5) In, or within five hundred (500) feet of, any safety rest or recreation area, publicly owned, controlled, and maintained pursuant to section 319 of title 23 of the United States Code;

(6) Within five hundred (500) feet of any sanitary or other facility for

the accommodation of the motorist, publicly owned, controlled, and maintained pursuant to section 319 of title 23 of the United States Code;

(7) In, or within five hundred (500) feet of, any strip of land, an interest in which has been acquired by this state for the restoration, preservation, or enhancement of scenic beauty, and which is publicly controlled and maintained, pursuant to section 319 of title 23 of the United States Code;

(8) Specifically zoned noncommercial or nonindustrial under the authority of presently existing zoning statutes or zoning statutes hereafter enacted in this state.

The foregoing provisions of this subsection shall be so interpreted as to protect the uses, activities and features above specified, whether now in existence or hereafter established. In addition, any area zoned commercial, as hereinbefore provided, which is otherwise inappropriate for the commercial uses specified in subsection (c) shall be promptly rezoned in such a manner as to prohibit such uses therein, as provided in subsection (e), but subject to the protection of agricultural activities and private residential uses as therein specified.

(c) Permitted uses. The following uses and activities, subject to the regulations specified in subsection (d) concerning reasonable zoning regulations by the several boards of county commissioners, shall be permitted in areas zoned as commercial under this section.

(1) Agricultural, grazing, ranching, horticulture uses and activities, and the growing of timber, and all other uses and activities reasonably or customarily related thereto, or generally permitted in areas zoned for agriculture, grazing, ranching, or the like (herein collectively referred to as "agricultural activities");

(2) Buildings used for private residences;

(3) Motels and hotels;

(4) Restaurants and similar establishments serving prepared foods on-premise;

(5) Grocery stores;

(6) Gasoline stations;

(7) Sporting goods stores;

(8) Golf clubs and courses;

(9) Agricultural produce stands;

(10) Resorts, and recreational facilities reasonably related to the topography and nature of the land;

(11) Outdoor advertising, whether on-premise or off-premise and regardless of its content; and

(12) Such other uses and activities as the several boards of county commissioners may in their discretion deem suitable therein.

(d) Zoning and building regulations. Outdoor advertising shall be subject to the regulations specified in section 6 [32-4706] concerning size, spacing and lighting and to none other. All other uses and activities specified in subsection (c), except the agricultural activities and private residential uses aforesaid, shall be subject to such reasonable regulations

as may be enacted by the several boards of county commissioners, or under their authority, in the manner provided by presently existing or hereafter enacted planning and zoning statutes.

(e) Rezoning by counties. The several boards of county commissioners, or those acting under their authority, in accordance with presently existing or hereafter enacted planning or zoning statutes, are hereby authorized to rezone any commercial zone or part thereof, hereby created, in accordance with applicable zoning principles, in either a more or less restrictive manner; provided, that no restrictive rezoning shall prohibit the agricultural activities and private residential uses aforesaid. In so acting, such boards, or those acting under their authority, shall utilize their presently existing or hereafter authorized planning and zoning procedures. Nothing in this section shall affect any authority of any political subdivision to zone lands not zoned or rezoned by the legislature hereunder.

(f) Zoning principles. The zoning principles which are relevant to land-use planning and zoning outside of municipalities and which govern in this state are as follows:

(1) Lands, whether vacant or used or not, shall be so zoned as to permit the uses thereof which are appropriate thereto, and to prohibit the uses thereof which are inappropriate thereto.

(2) The present and future needs of the economy of the state for a particular kind of activity and the convenience which it would afford to the citizenry can in themselves render some lands appropriate therefor which might otherwise be inappropriate therefor.

(3) Zoning shall not, contrary to the desires of the affected parties, be unreasonably discriminatory as between the owners of substantially similar parcels of land to similar uses.

(4) Agricultural, horticultural, grazing, and ranching uses and purposes, and the growing of timber, shall always be deemed appropriate upon the lands herein zoned and all other activities specified in subsection (c) shall also be deemed appropriate for the lands herein zoned and lands having a population of low density except where such lands are of uncommon natural beauty, and except as provided in subsection (b).

In zoning as aforesaid, the legislature has complied with and duly considered its said zoning principles in light of the developing economy, the desirability of lessening commercial congestion within municipalities, the desirable trend towards decentralization of commercial activities, the increasing needs of the motoring public, the economic necessity confronting businesses both inside and outside of municipalities of advertising to the motoring public, and the public interest in protecting areas of uncommon natural beauty.

(g) Effect on taxation. The zoning and rezoning effected and authorized by this section shall not in itself affect any taxes levied against real property or any assessment or assessment classification, but actual increases in value of any parcel of land by reason of the construction or erection of a building or structure thereon shall be taken into account in thereafter assessing the value thereof and in levying any ad valorem tax thereon.

(h) Future existing uses. The commercial zoning affected by this section shall be without prejudice to the right of the legislature hereafter to rezone and further rezone. The legislature further declares its intent to periodically review and, when deemed necessary, to modify or otherwise alter the zoning established by this section based on considerations of economic, physical, social, governmental and other conditions relating to the development of the state. Any sign, display or device used for outdoor advertising in any such commercial zone, which shall become illegal by reason of zoning by a board of county commissioners under subsection (e), or rezoning by the legislature, as herein provided, shall be required to be removed or brought into compliance as provided in section 8 [32-4708].

History: En. Sec. 4, Ch. 287, L. 1967.

32-4705. Unzoned areas. Unzoned commercial and industrial areas are defined for the purposes of this act as follows:

(a) Definition. An “unzoned commercial or industrial area,” consistent with and subject to the principles and standards set forth in subsection (f) of section 4 [32-4704], means any of the following unzoned areas adjacent to an interstate or primary highway:

(1) All land on the same side of the highway as, and within one thousand (1,000) feet of, any commercial or industrial activity other than outdoor advertising, measured from the boundaries of the land used or occupied by such activity, including its parking, storage and service areas, its driveways, and its established front, rear and side yards constituting an integral part of such activity, except land within three hundred (300) feet of a building used primarily as a residence without the consent of the owner thereof;

(2) All land on the other side of the highway which is directly opposite from, and of the same dimensions as, any area defined under the preceding paragraph, to the extent that such land is appropriate for outdoor advertising;

(3) All land within two hundred (200) feet of the nearest edge of the right of way of the highway, measured perpendicularly to such edge, to the extent that such land is traversed by a railroad right of way and is appropriate for outdoor advertising;

(4) All pockets of land lying between any commercial or industrial areas (whether so zoned or whether unzoned as defined in this subsection) which are not more than one thousand (1,000) feet apart, to the extent that such land is appropriate for outdoor advertising; and

(5) In addition, pursuant to the exercise of an informed discretion, all other unzoned lands appropriate for outdoor advertising which are determined to be unzoned commercial or industrial areas by any board of county commissioners.

(b) Determinations and redeterminations. The several boards of county commissioners shall determine the additional unzoned commercial or industrial areas provided for by paragraph (5) of subsection (a), and shall also redetermine unzoned commercial and industrial areas defined under paragraphs (2), (3), and (4) thereof to be noncommercial and non-industrial unzoned areas to the extent that same are not appropriate for

outdoor advertising. In so acting such boards shall utilize the procedures authorized in subsection (e) of section 4 [32-4704], and shall apply the zoning principles set forth in subsection (f) of section 4 [32-4704].

History: En. Sec. 5, Ch. 287, L. 1967.

32-4706. Regulations—customary usages. Subject to the provisions for the removal of nonconforming signs and the payment of just compensation therefor, contained in sections 8 and 9 [32-4708 and 32-4709] herein, and after January 1, 1968, signs subject to this act, but permitted under subsections (d) and (e) of section 3 [32-4703], shall comply with the regulations of this section governing the size, lighting and spacing thereof, which regulations are consistent with customary usages of this state.

(a) Regulations as to size. (1) The maximum area of a sign face shall be six hundred fifty (650) square feet, including border and trim, but not supports.

(2) In the case of double-faced, back-to-back and v-type signs, said size limitation shall be six hundred fifty (650) square feet, applicable to each separate face.

(b) Regulations as to lighting. (1) No revolving or rotating beam of light simulating an official emergency device shall be permitted. Signs with flashing red, green or amber incandescent lights shall not be permitted, except in illuminated signs giving such public service information as time, date, temperature or direction.

(2) External lighting, such as floodlights, slimline and gooseneck reflectors, shall be permitted, provided that it is shielded so as to prevent the direction of rays of light to any part of the main-traveled way.

(3) No lighting shall interfere with the effectiveness of any official traffic control device or official warning sign.

(c) Regulations as to spacing. (1) Within municipalities, signs shall be erected and maintained in conformity with any applicable building codes and ordinances relating to spacing.

(2) Outside of municipalities, no sign shall be erected adjacent to a limited access highway within five hundred (500) feet, nor adjacent to a nonlimited access highway within five hundred (500) feet, of an existing off-premise sign unless separated therefrom by a building, structure, highway or roadway.

(3) Neither inside nor outside of municipalities shall any sign be erected or maintained in such a location as to prevent the driver of a vehicle from having an effective view of any official traffic control device applicable to him or of approaching, merging or intersecting traffic within five hundred (500) feet of such sign.

(4) For the purposes of the spacing regulations aforesaid, double-faced, back-to-back, and v-type signs shall be considered as a single sign.

(d) Legislative finding. The legislature has conducted hearings and received evidence as to customary usage in outdoor advertising in this state, and, based thereon, and upon its own knowledge thereof, does hereby find and determine that the regulations in this paragraph set forth as to

size, lighting and spacing are consistent with customary usage in this state.

History: En. Sec. 6, Ch. 287, L. 1967.

32-4707. Permits. After January 1, 1968, no private off-premise sign shall be maintained without a permit. Applications for permit shall be made to the state highway commission or, within municipalities, to the municipal authority designated by its legislative body on forms furnished by said commission, and calling for reasonable information, including a statement that the owner or occupant of the land in question has consented to the erection or maintenance of the sign thereon, and shall be accompanied by a fee in accordance with the following schedule:

(a) Fifty cents (\$.50) if the advertising area does not exceed fifty (50) square feet;

(b) One dollar (\$1) if such area exceeds fifty (50) but does not exceed three hundred (300) square feet;

(c) Two dollars (\$2) if such area exceeds three hundred (300) square feet.

Permits shall be for the calendar year, shall be assigned a permanent number, and shall be renewed annually upon payment of said fee for the new year without the filing of a new application. Fees shall not be prorated for fractions of the year. Two (2) permits shall be required for a double-faced, back-to-back, or v-type sign. Advertising copy may be changed at any time without the payment of an additional fee.

The commission or municipal authority shall issue a permit for the sign covered by application duly made as aforesaid, unless it is in violation of this act and, upon the initial issuance of a permit, shall also issue a permanent identification tag not larger than six (6) square inches, carrying the permit number, which tag the permittee shall affix to the sign. Notwithstanding the foregoing, and despite any such violation, a permit and identification tag shall be issued for any sign in existence on the effective date of this act and the permit shall thereafter be renewed for the periods of time prescribed in section 8 [32-4708].

A permit may be revoked after hearing upon thirty (30) days' notice if the state highway commission finds that any statement made in the application therefor was false or misleading or that the sign covered thereby is not in good general condition and in a reasonable state of repair, or is otherwise in violation of this act, provided that such false or misleading information has not been corrected and that the sign has not been brought into compliance with this act within thirty (30) days after written notification thereof.

History: En. Sec. 7, Ch. 287, L. 1967.

32-4708. Removal of nonconforming signs. Any sign lawfully in existence along the interstate system or the primary system on October 22, 1965, and which is not now in conformity with the provisions contained herein shall not be required to be removed until July 1, 1970. Any other sign lawfully erected which does not on January 1, 1968, or at any time

thereafter, conform to this act, shall not be required to be removed until the end of the fifth year after it becomes nonconforming.

History: En. Sec. 8, Ch. 287, L. 1967.

32-4709. Compensation for removal of signs. The state highway commission is directed to acquire by purchase, gift, or condemnation and shall pay just compensation when and in so far as signs are required to be removed by this act, as follows:

(a) Any such removal, by whomever effected, shall be deemed a taking and appropriation by this state of the following:

(1) From the owner of such sign: all right, title, and interest in such sign, and in his leasehold, license or other interest, including purely contractual interests, in or related to the land; and

(2) From the owner of the real property on which the sign is located: the right to erect and maintain the sign thereon, whether or not a contractual arrangement for the erection and maintenance of such sign exists.

(b) In cases of purchase, compensation shall be paid in the amount and at the time mutually agreed upon. In cases of condemnation, compensation shall be paid in the amount computed as aforesaid, and the person or persons entitled thereto shall have the same rights in respect to the time of payment, procedures, and resort to the courts of this state as those of a record owner whose fee in lands has been condemned and taken for highway right of way.

(c) In addition, the state highway commission may voluntarily purchase from any sign owner or landowner the rights, titles, interests and elements of value aforesaid prior to the time when the sign's removal is required by this act, or whether or not its removal is required by this act, upon such terms as to price, removal, date of removal, and otherwise, as are mutually agreeable to it and to the owners of the sign and land.

(d) Notwithstanding anything to the contrary contained herein no compensation shall be paid with respect to any sign erected after the passage and approval of this act, which on January 1, 1968, shall not be in conformity with the provisions contained herein.

History: En. Sec. 9, Ch. 287, L. 1967.

32-4710. Unlawful advertising. Any advertising sign which violates the provisions of this act is hereby declared to be illegal. Subject to sections 8 and 9 [32-4708 and 32-4709], the state highway commission shall give thirty (30) days' notice, by certified mail, to the owner thereof to remove same if it is a prohibited sign or cause it to conform to regulations if it is an authorized sign. If the owner fails to act within thirty (30) days as required in the notice, the state highway commission shall proceed to cause the removal of the sign under section 11 [32-4711] at the owner's expense.

History: En. Sec. 10, Ch. 287, L. 1967.

32-4711. Enforcement. The state highway commission shall enforce the provisions of this act through the remedy of injunction or other appropriate legal proceedings, and shall not act except through such proceed-

ings. Neither the state highway commission nor any other agency nor political subdivision of this state shall, by plantings or otherwise, obstruct the view, or in any other way interfere with the effectiveness of any sign legally in place under the provisions of this act.

History: En. Sec. 11, Ch. 287, L. 1967.

32-4712. Agreements with the United States. The state highway commission is hereby authorized and directed in behalf of this state to seek agreements with the secretary of commerce or the secretary of transportation as to the matters specified for agreement in subsection (d) of section 131 of title 23, United States Code. Said commission's authority so to act is hereby limited, consistent with constitutional principles, to seeking and if possible making agreements embodying the provisions and only the provisions of sections 5 and 6 [32-4705 and 32-4706], on the basis that they are in conformity with said section 131.

If such agreement or agreements cannot be achieved, the attorney general of this state shall promptly initiate proceedings under the provisions of said section 131 with respect to hearings, stay-of-penalties, and judicial review in order to resolve the disagreement by judicial determination. He shall also initiate such proceedings in the event of a determination to withhold any funds from this state for any alleged failure of this state to comply with any provision of said section 131, in order to obtain a judicial determination of whether this act provides effective control of outdoor advertising in conformity with said section 131.

History: En. Sec. 12, Ch. 287, L. 1967.

32-4713. Guarantee against loss of funds. It is the overriding intent of this act, while asserting the rightful independence of this state in regard to the regulation of land usage within its borders, to ensure in all events against the withholding of any federal-aid highway funds from this state under the Federal Highway Beautification Act of 1965. Accordingly, in the event that a United States district court for this state or, in case of further appeal or review, the United States court of appeals or supreme court should hold any part of this act, or any action taken hereunder, to be in noncompliance with said federal act, the state highway commission shall, when all possibilities of review have been exhausted, promulgate such regulations as are minimally necessary to avoid the loss of any such funds, which regulations shall govern to the extent of any inconsistency between them and this act and shall be retroactively effective from January 1, 1968, if necessary to achieve the objective of this section, and until modified or superseded by further action by the legislature. Such regulations may suspend or supersede any provision of this act or any action taken hereunder, including any zoning action, but only to the extent necessary to achieve the objective of this section. In so acting the state highway commission shall be guided by and conform to the judgment and instructions of the highest court to rule on this act's compliance or not, and, in the case of the two (2) matters specified for agreement with the secretary of commerce or transportation in subsection (d) of section 131 of said title 23, by the position of such secretary to the extent that it may not have been set aside, modified or disapproved by such court.

History: En. Sec. 13, Ch. 287, L. 1967. 1965, referred to in the first sentence of this section, is compiled as sections 131, 136, and 319 of Title 23, United States Code.

Compiler's Note

The Highway Beautification Act of

32-4714. Congressional action or nonaction. In the event that the Congress should fail prior to January 1, 1972, to make an appropriation for compensation purposes in such an amount that this state's share thereof will be sufficient to pay seventy-five per cent (75%) of the compensation provided for in section 9 [32-4709], to the extent payable under the Highway Beautification Act of 1965, and as estimated by the state highway commission, this act shall on January 1, 1972, become automatically null and void. In any event, if at any time in the future congress should amend section 131 of title 23, United States Code, or whatever law might then provide for federally required control of signs by the several states, in such manner as to no longer require control of signs in areas adjacent to the primary system, or any part or parts thereof, this act shall automatically be deemed amended as of the effective date of such congressional action in such manner that it will thenceforth in no way whatsoever control, restrict, regulate, or in any way affect the erection or maintenance of signs in areas adjacent to the primary system, or to such part or parts thereof; provided, however, that nothing herein shall diminish the rights of any sign owner to compensation under section 9 [32-4709] for signs which may theretofore have been removed from areas adjacent to the primary system.

History: En. Sec. 14, Ch. 287, L. 1967; amd. Sec. 1, Ch. 211, L. 1969.

Compiler's Note

The Highway Beautification Act referred to in the first sentence of this section, is compiled as sections 131, 136, and 319 of Title 23, United States Code.

Amendments

The 1969 amendment extended applicability of the act from January 1, 1970 to January 1, 1972.

Separability Clause

Section 16 of Ch. 287, Laws 1967 read

"It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of the act is invalid in one (1) or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 15 of Ch. 287, Laws 1967 read "All statutes and regulations promulgated governing outdoor advertising adjacent to the federal interstate and primary highway systems are hereby repealed."

TITLE 33—HOMESTEADS

Chapter 1. Homesteads, 33-124.

CHAPTER 1—HOMESTEADS

Section 33-124. Homesteads—quantity and value of land.

33-124. (6968) Homesteads—quantity and value of land. Homesteads may be selected and claimed:

1 and 2. * * * [Same as parent volume.]

3. Such homestead, in either case, shall not exceed in value the sum of seven thousand five hundred dollars (\$7,500.00), provided, however, that in any proceedings instituted to determine the value of such homestead, the assessed value of such land, with included appurtenances, if any, and of such dwelling house as appears on the last completed assessment roll preceding the institution of such proceedings shall be prima facie evidence of the value of the property claimed as a homestead.

History: En. Sec. 1693, Civ. C. 1895; re-en. Sec. 4717, Rev. C. 1907; re-en. Sec. 6968, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1931; amd. Sec. 1, Ch. 166, L. 1937; amd. Sec. 1, Ch. 50, L. 1941; amd. Sec. 1, Ch. 266, L. 1965. Cal. Civ. C. Sec. 1260.

maximum value of the homestead specified in paragraph 3 from \$2,500 to \$7,500.

Effective Date

Section 2 of Ch. 266, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 9, 1965.

Amendment

The 1965 amendment increased the

TITLE 34—HOTELS

Chapter 3. Licensing and regulation of transient lodging establishments, 34-301 to 34-310.

CHAPTER 2—SANITATION AND CONTROL BY STATE BOARD OF HEALTH

(Repealed—Section 12, Chapter 18, Laws of 1967, effective January 1, 1968)

34-201 to 34-217. (2485 to 2495, 2497 to 2502) Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 160, L. 1917; Secs. 1 to 13, Ch. 36, L. 1919; Sec. 1, Ch. 84, L. 1921), relating to sanitation of hotels and lodging houses, were repealed by Sec. 12, Ch. 18, Laws 1967, effective January 1, 1968. For present law, see 34-301 to 34-310.

CHAPTER 3—LICENSING AND REGULATION OF TRANSIENT LODGING ESTABLISHMENTS

- Section 34-301. Control and regulation of establishments required by public interest.
34-302. Definitions.
34-303. License required.
34-304. Fee—term of license.
34-305. Cancellation or denial of license—procedure.
34-306. Rules and regulations—co-operative agreements.
34-307. Inspections.
34-308. Authority of board to issue subpoenas.
34-309. Penalty.
34-310. License fee—supersedes other fees.

34-301. Control and regulation of establishments required by public interest. It is hereby found and declared that the public welfare requires control and regulation of the operation of establishments providing transient lodging space and/or accommodations, as defined in section 2 [34-302] hereof, and the control, inspection, and regulation of persons engaged therein, in order to prevent or eliminate insanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found and declared that the regulation of establishments providing transient lodging space and/or accommodations as above outlined is in the interest of social well-being and the health and safety of the state and all of its people.

History: En. Sec. 1, Ch. 18, L. 1967.

Title of Act

An act to regulate establishments providing transient lodging space and/or accommodations; defining terms; providing for licensure and license fee; and providing procedure for cancellation or denial of license; empowering state board of health of Montana to make and enforce all necessary regulations including sanitary standards for such establishments; providing for public hearing on rules

and regulations; and to establish co-operative agreements with other Montana agencies; providing for inspection and report of inspection; empowering state board of health of Montana to issue subpoenas; prescribing penalties; providing for fee required by this act to supersede other fees for same purpose; directing that unconstitutionality of a part of this act shall not affect or impair the remainder; and repealing sections 34-201, 34-202, 34-203, 34-204, 34-205, 34-206, 34-207, 34-208, 34-209, 34-210, 34-211, 34-212,

34-213, 34-214, 34-215, 34-216, 34-217, Re-vised Codes of Montana, 1947, as amended or supplemented, and establishing effective date.

34-302. Definitions. Except where the context indicates a different meaning, terms used in this act shall be defined as follows:

(a) "Person" includes any individual, partnership, corporation, association, county, municipality, co-operative group, or other entity engaged in the business of operating or owning or offering the services of a hotel, motel, or tourist home.

(b) "Board" as used in this act shall mean the state board of health of the state of Montana.

(c) "Executive officer" shall mean the executive officer of the state department of health.

(d) "Department" means the state department of health.

(e) "Hotel or motel" shall mean and include any building or structure kept, used, or maintained as or advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodging house or place where sleeping accommodations are furnished for a fee to transient guests with or without meals.

(f) "Tourist home" means any establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when such accommodations are offered for hire or rent for the use of the traveling public.

History: En. Sec. 2, Ch. 18, L. 1967.

34-303. License required. Each year, every person engaged in the business of conducting or operating a hotel, motel, or tourist home, as defined in section 2 [34-302], shall procure a license issued by the department. A separate license shall be required for each establishment; however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required which shall enumerate on the certificate thereof the types of establishments licensed. Applications for such license shall be made in writing to the department on such forms and with such pertinent information as it may deem necessary. Such licenses shall be granted as a matter of right, unless conditions exist which are grounds for a cancellation or denial of a license as hereinafter set forth, and subject to the right of applicant for license to hearing and judicial review as hereinafter set forth.

History: En. Sec. 3, Ch. 18, L. 1967.

34-304. Fee—term of license. (a) There shall be paid to the department with each application for such license or for renewal of such license, an annual license fee of five dollars (\$5). Fees collected by the department of health shall be transmitted to the state treasurer and placed to the credit of the general fund.

(b) Each license shall expire on December 31 following its date of issue, unless canceled for cause. Renewal may be obtained annually by paying the required annual license fee. Such license shall not be transfer-

able nor be applicable to any premises other than that for which originally issued.

History: En. Sec. 4, Ch. 18, L. 1967.

34-305. Cancellation or denial of license—procedure. (a) The executive officer of the department may cancel any license if he finds, after proper investigation by a representative of the department, that the licensee has violated provisions of this act or any regulation effective under this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the executive officer of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval thereof by said executive officer shall be a bar to prosecution for violation.

(b) No license shall be denied or canceled by the executive officer of the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled. In such case, licensee must make written request to the executive officer of the department for a hearing within ten (10) days after notice of the grounds or charges has been received.

(c) When a multiple type establishment is licensed by the department, the denial or cancellation of said license may affect the entire establishment or only a portion of same as determined by the executive officer (a multiple type establishment includes two or more of the following: hotel, motel, or tourist home).

(d) Upon cancellation of a license or the right to operate one or more of the multiple type establishments under the same license, the license certificate shall be returned to the executive officer for destruction or deletion of types of establishment as the executive officer may direct in his notice of cancellation.

(e) Any order made by the executive officer after hearing, as provided herein, denying or canceling any license may be reviewed by application for writ of review (certiorari) commenced in the district court of the county in which the licensed premises are located, within ten (10) days from the date of notice in writing of the executive officer's order of denial or canceling such license has been served upon him.

(f) Whenever the department shall furnish evidence to the county attorney of any county in this state, such county attorney shall prosecute any person, persons, firm, or corporation violating any provisions of this act, or any rules or regulations effective under this act.

History: En. Sec. 5, Ch. 18, L. 1967.

34-306. Rules and regulations—co-operative agreements. (a) The board is hereby empowered to prescribe and to enforce rules and regulations and to prescribe such procedures as are necessary to preserve the public health and safety. These rules and regulations shall relate to construction, furnishings, housekeeping, personnel, sanitary facilities and

controls, water supply, sewerage and sewage disposal system, refuse collection and disposal, registration and supervision; provided further that no rule or regulation shall be effective until a public hearing has been held for review of said rules and regulations. Said public hearing is to be announced to all Montana licensed operators thirty (30) days in advance in writing and accompanied by copy of proposed rules and regulations.

(b) The department is hereby authorized to enter into co-operative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this act, or any part thereof.

History: En. Sec. 6, Ch. 18, L. 1967.

34-307. Inspections. (a) The department, through its employees, and through local, county and district health officers, sanitarians, or other authorized representatives, shall make all necessary investigations and inspections for enforcement of this act. Each local, county or district health officer, sanitarian, or other authorized representative shall make regular inspections as the rules and regulations of the board may direct, and such special inspections as the department may from time to time direct, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the board may direct.

(b) All persons authorized by this act or by regulations adopted under this act shall have free access at all reasonable hours to any of the establishments listed and defined in section 2 [34-302], for the purpose of making inspections.

History: En. Sec. 7, Ch. 18, L. 1967.

34-308. Authority of board to issue subpoenas. In any proceeding under this act, the board may administer oaths and issue subpoenas, summon witnesses and take testimony of any person within the state of Montana.

History: En. Sec. 8, Ch. 18, L. 1967.

34-309. Penalty. Any person violating any provision of this act or regulation made hereunder shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for the first offense, and not less than seventy-five dollars (\$75) nor more than two hundred dollars (\$200) for the second offense; and for the third and subsequent offenses, by a fine of not less than two hundred dollars (\$200) and imprisonment in the county jail not to exceed ninety (90) days.

History: En. Sec. 9, Ch. 18, L. 1967.

34-310. License fee—supersedes other fees. Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this act.

History: En. Sec. 10, Ch. 18, L. 1967.

Separability Clause

Section 11 of Ch. 18, Laws 1967 read

"If any clause, sentence, paragraph, section or part of this act, shall for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction,

such judgment or decree shall not affect, impair nor invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered."

Repealing Clause

Section 12 of Ch. 18, Laws 1967 read
"All acts or parts of acts in conflict here-

with are hereby repealed and specifically sections 34-201, 34-202, 34-203, 34-204, 34-205, 34-206, 34-207, 34-208, 34-209, 34-210, 34-211, 34-212, 34-213, 34-214, 34-215, 34-216, 34-217, Revised Codes of Montana, 1947."

Effective Date

Section 13 of Ch. 18, Laws 1967 read
"This act shall be effective January 1, 1968."

TITLE 36—HUSBAND AND WIFE

Chapter 2. Conciliation law, 36-201 to 36-205.

CHAPTER 1—HUSBAND AND WIFE—MUTUAL OBLIGATIONS, POWERS AND PROPERTY RIGHTS

36-101. (5782) Mutual obligations of husband and wife.

Cross-Reference

Cause of action for alienation of affections abolished, sec. 17-1201.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower &*

Lubrecht Constr. Co., 214 F Supp 298, 299.

Under section 48-101 and this section a woman by her marriage obtains a contractual right to consortium. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

References

Clark v. Clark, 143 M 183, 387 P 2d 907.

36-110. (5791) Married women may prosecute actions.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 299.

Removal of Common-law Disability

This section and section 36-128 are procedural and create no new rights, but only remove the common-law disability of married women to enforce their rights otherwise created and existing. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

36-128. (5809) May sue and be sued.

History Correction

History: En. Sec. 1444, 5th Div. Comp. Stat. 1887, re-en. Sec. 253, Civ. C. 1895; re-en. Sec. 3733, Rev. C. 1907; re-en. Sec. 5809, R. C. M. 1921.

Lubrecht Constr. Co., 214 F Supp 298, 299.

Removal of Common-law Disability

This section and section 36-110 are procedural and create no new rights, but only remove the common-law disability of married women to enforce their rights otherwise created and existing. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

Action for Loss of Consortium

A wife can maintain an action for loss of consortium when such loss is the result of negligent injury to her husband. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower &*

CHAPTER 2—CONCILIATION LAW

Section 36-201. Manner of citation.

36-202. Purposes—definitions—where applicable.

36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential.

36-204. Procedure.

36-205. Powers of the court.

36-201. Manner of citation. This act may be cited as the "Montana Conciliation Law."

History: En. Sec. 1, Ch. 238, L. 1963.

Title of Act

An act constituting the several district

courts, courts of conciliation for the purpose of protecting the rights of children and to promote and protect the family life and the institution of matrimony by

providing a means for reconciliation of spouses and the amicable settlement of domestic and family controversies, and specifically where minor children are involved; defining the jurisdiction of said courts and to establish such courts which requires a determination by the judge or judges of the district whether such conciliation court is necessary in said district; providing for the designation of a judge to handle conciliation cases, necessary personnel, and payment of the expenses of said courts of conciliation by the respective counties in which said court is functioning; the manner of holding conferences, privacy of hearings, proceedings and recommendations; no fees to be charged, the hearings to be informal, stay

of divorce proceedings for not to exceed thirty days to give the parties an opportunity for a reconciliation conference, transfer of cases to the conciliation court when it appears that the welfare of minors is going to be seriously affected and permitting the jurisdiction of the conciliation court where no minors are involved if it appears that a reconciliation may be had, granting the conciliation court the same powers as a district court under the Constitution of the state of Montana, Article 8, Section 1, section 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

36-202. Purposes—definitions—where applicable. (1) Purposes. The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

(2) Definitions. As used in this chapter "shall" is mandatory and "may" is permissive.

(3) Applicability of the Law—Determination by District Court. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge, and by a majority of the judges of the district court in counties having more than one such judge.

History: En. Sec. 2, Ch. 238, L. 1963.

36-203. Conciliation court—judges—budget—conciliation counselors—probation officers—proceedings confidential. (1) Exercise of Jurisdiction. Each district court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court."

(2) Selection of Judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

(3) Transfer of Cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so

appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

(4) Budget. The provisions of the county budget system, section[s] 16-1901 to 1911, inclusive, R.C.M. 1947, shall, except as provided by section 4, subsection 9 [36-204 (9)] of this act, be applicable to expenditures for the court of conciliation; provided, however, that the court may submit to the board of county commissioners the information required by section 16-1901 on or before July 1st of each year.

(5) Manner of Conciliation. The judge of the conciliation court may hear all matters invoked under this act or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

The conciliation counselor shall:

(a) Hold conciliation conferences with parties to, and hearings in, proceedings under this chapter, and make recommendations concerning such proceedings to the judge of the conciliation court.

(b) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

(6) Probation Officers Duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested, and in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

(7) Privacy of Hearings. All district court hearings or conferences in proceedings under this chapter shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel and witnesses. Conferences may be held with each party and his counsel separately and in the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

(8) Jurisdiction. The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the Constitution of Montana, Article 8, Section 1, Chapter 3 [Title 93], Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court.

History: En. Sec. 3, Ch. 238, L. 1963.

36-204. Procedure. (1) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household, and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy, and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(2) Prior to the filing of any action for divorce, annulment or separate maintenance, either spouse, or both spouses, may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses, so as to avoid further litigation over the issue involved.

(3) The petition shall be captioned substantially as follows:

District Court of the State of Montana
For the County of _____

Upon the petition of _____ Petitioner	}	Petition for Conciliation (Under the Conciliation Court Law)
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And concerning _____ _____ Respondents.	}	_____ and _____
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To the Conciliation Court:

(4) The petition shall:

(a) Allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy.

(b) State the name and age of each minor child whose welfare may be affected by the controversy.

(c) State the name and address of the petitioner, or the names and addresses of the petitioners.

(d) If the petition is presented by one spouse only, name the other spouse as a respondent, and state the address of that spouse.

(e) Also name as a respondent any other person who has any relation to the controversy, and state the address of the person, if known to the petitioner.

(f) State such other information as the court may by rule require.

(5) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition, when any person requests such assistance. All public officers

in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

(6) No Fees. No fee shall be charged by any officer for filing the petition, nor shall any fee be charged by any officer for the performance of any duty pursuant to this chapter.

(7) Time and Place of Hearings. The court shall fix a reasonable time and place for hearing on the petition, and shall cause such notice of the filing of the petition and the time and place of the hearing as it deems necessary to be given to the respondents. The court may, when it deems it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil cases.

(8) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district, and the hearing may be had in chambers or otherwise, except that the time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(9) Hearings Informal. The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this act the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians or psychiatrists, or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

(10) Orders—Effective Time—Reconciliation Agreement. At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event shall such orders be effective for more than thirty (30) days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(11) During a period beginning upon the filing of the petition for conciliation and continuing until thirty (30) days after the hearing of the petition for conciliation, neither spouse shall file any action for divorce, annulment of marriage, or separate maintenance.

If, however, after the expiration of such period, the controversy between the spouses has not been terminated, either spouse may institute proceedings for divorce, annulment of marriage or separate maintenance. The pendency of a divorce, annulment, or separate maintenance action shall not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(12) **Stay of Divorce Proceedings—Where Conciliation Petition Filed First.** Whenever any action for divorce, annulment of marriage, or separate maintenance is filed in the district court, and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage or the disruption of the household, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

(13) **Jurisdiction Where No Minors Involved.** Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested action for divorce, annulment, or separate maintenance, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

History: En. Sec. 4, Ch. 238, L. 1963.

36-205. Powers of the court. The conciliation court shall have the same powers as the district court under the Constitution of the state of Montana, Article 8, Section 1, section[s] 93-301 to 93-321 inclusive, Revised Codes of Montana, 1947, and acts amendatory and relating thereto, including the right of disqualification of judges of courts of conciliation.

History: En. Sec. 5, Ch. 238, L. 1963.

TITLE 37—INITIATIVE AND REFERENDUM

Chapter 1. Initiative and referendum, 37-104.1.

CHAPTER 1—INITIATIVE AND REFERENDUM

Section 37-104.1. Attorney general's summary of referred or initiative measures—statement by secretary of state for referendum measures—placement on ballot.

37-101. (99) Form of petition for referendum.

Contents of Petition

Statute prescribing form required for referendum petition was satisfied by petition stating ordinance number, title and date of session of city council at which

ordinance was passed, even though full text of ordinance was not set forth in petition. *Tod v. City of Billings*, 149 M 462, 430 P 2d 620.

37-103. (101) County clerk to verify signatures.

Sufficiency of Certification

City clerk's certification of petition for referendum presented on city ordinance simply identifying petition and stating "it

has been determined that five per cent of the qualified electors have not signed" did not meet requirements of statute. *Tod v. City of Billings*, 149 M 462, 430 P 2d 620.

37-104.1. Attorney general's summary of referred or initiative measures—statement by secretary of state for referendum measures—placement on ballot. The secretary of state of the state of Montana prior to certifying and numbering of referendum, initiative or constitutional amendment to the several counties of Montana as provided by sections 37-105 and 23-1102 [23-3506] of the Revised Codes of Montana, 1947, shall transmit a copy of the measure to be voted upon to the attorney general of Montana. Within ten (10) days after the measure is filed with him, the attorney general shall provide and return to the secretary of state a statement in ordinary plain language explaining in not more than one hundred (100) words the general purpose of the measure submitted. In the case of referendum measures, the secretary of state shall prepare a statement setting forth the vote by which the referendum passed each house of the legislative assembly and that it was signed by the governor. The statement by the secretary of state shall precede the attorney general's statement on the printed form. The statement as prepared by the attorney general, and the statement of the secretary of state for referendum measures only, shall be in addition to the legislative title of the measure, the statement of the secretary of state for referendum measures only and the statement of the attorney general shall precede the other title of the measure. In providing the statement, the attorney general shall give a true and impartial statement of the purpose of the measure in plain, easily understood language and in such manner as shall not be an argument or likely to create prejudice either for or against the measure.

History: En. Sec. 1, Ch. 22, L. 1963; amd. Sec. 1, Ch. 21, L. 1969.

Compiler's Notes

Section 23-1102, referred to in the first part of this section, was repealed by Sec. 248, Ch. 368, Laws 1969. For new law, see sec. 23-3506.

Title of Act

An act to require a true, plain and impartial statement of the meaning and purpose of any referendum, initiative or constitutional amendment submitted to the

vote of the people of the state of Montana and repealing all acts and parts of acts in conflict therewith.

Amendments

The 1969 amendment inserted the provision relating to the statement by the secretary of state for referendum measures.

Repealing Clause

Section 2 of Ch. 22, Laws 1963 repealed all acts and parts of acts in conflict therewith.

TITLE 38—INSANE AND FEEBLE-MINDED

- Chapter 1. The Montana state hospital—management, 38-107 to 38-110, 38-119, 38-120.
2. Examination of persons mentally deranged—commitment, 38-207, 38-210.
4. Examination and commitment of person as mentally deranged but not dangerous—voluntary application for admission, 38-406.1, 38-406.2.
5. Convalescent leave of patients, 38-502, 38-504, 38-505.
6. Eugenical sterilization law, Repealed—Section 1, Chapter 310, Laws of 1969.
7. Alcoholism services center, Repealed—Section 15, Chapter 112, Laws of 1963; Section 101, Chapter 199, Laws of 1965.
8. Montana state training school and hospital, Repealed—Section 10, Chapter 213, Laws of 1963; Section 82, Chapter 266, Laws of 1963; Section 101, Chapter 199, Laws of 1965.
9. Leases of farm land for state hospital and state penitentiary authorized, Repealed—Section 82, Chapter 266, Laws of 1963.
10. State department of mental hygiene, Repealed—Section 101, Chapter 199, Laws of 1965.

CHAPTER 1—THE MONTANA STATE HOSPITAL—MANAGEMENT

- Section 38-107. Department may send patient to friends.
- 38-108(1). May contract with some other institution.
- 38-108(2). May contract with some other institution.
- 38-109. Discharge of patients.
- 38-110. Maintenance of indigent persons on discharge.
- 38-119. Insane person not indigent must be paid for.
- 38-120. Receipt of nonresident insane pending return to home state.

38-101, 38-102. (1413) Repealed.

Repeal

These sections (Secs. 2260, 2261, Pol. C. 1895; Sec. 1, Ch. 57, L. 1913; Sec. 1, Ch. 76, L. 1943; Sec. 19, Ch. 266, L. 1963),

relating to the name and management of the state hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-103. (1414) Repealed.

Repeal

This section (Sec. 2, Ch. 57, L. 1913), enumerating the powers and duties of

the board of the Montana state hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-104. (1415) Repealed.

Repeal

This section (Sec. 3, Ch. 57, L. 1913; Sec. 1, Ch. 42, L. 1923; Sec. 1, Ch. 149, L. 1929; Sec. 1, Ch. 268, L. 1947; Sec. 20, Ch.

266, L. 1963), relating to the superintendent of the state hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-105, 38-106. (1416, 1417) Repealed.

Repeal

These sections (Secs. 4, 5, Ch. 57, L. 1913), relating to the superintendent and

other staff members of the Montana state hospital, were repealed by Sec. 82, Ch. 266, Laws 1963.

38-107. (1418) Department may send patient to friends. The department of public institutions may, at the expense of the state, when satisfied it will be for the best interest of any insane person, send him to friends outside of the state.

History: En. Sec. 2280, Pol. C. 1895; re-en. Sec. 1121, Rev. C. 1907; re-en. Sec. 1418, R. C. M. 1921; amd. Sec. 21, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "The department of public institutions" at the beginning of the section for "The board."

38-108(1). (1419) May contract with some other institution. The department of public institutions may, when satisfied it will be for the

best interest of any insane person in the state, send him to some other institution, with its consent, outside the state.

History: En. Sec. 2281, Pol. C. 1895; re-en. Sec. 1122, Rev. C. 1907; re-en. Sec. 1419, R. C. M. 1921; amd. Sec. 8, Ch. 213, L. 1963.

language of Ch. 213, Laws 1963; the language of Ch. 266 appears below as section 38-108(2).

Compiler's Note

This section was amended twice in 1963, once by Ch. 213 and once by Ch. 266. The two amendments may be inconsistent, in that Ch. 266 contains language that was deleted by Ch. 213; therefore, the compiler has set out the language of both amendatory acts. The above is the

Amendment

The 1963 amendment substituted "department of public institutions" for "board" at the beginning of the section; and deleted from the end of the section a clause reading, "and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent."

38-108(2). (1419) May contract with some other institution. The department of public institutions may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state, and the expense of sending and supporting him at such institution must be paid by the state, providing such person is indigent.

History: En. Sec. 2281, Pol. C. 1895; re-en. Sec. 1122, Rev. C. 1907; re-en. Sec. 1419, R. C. M. 1921; amd. Sec. 22, Ch. 266, L. 1963.

piler has set out the language of both amendatory acts. The above is the language of Ch. 266, Laws 1963; the language of Ch. 213 appears as section 38-108(1).

Compiler's Note

This section was amended twice in 1963, once by Ch. 213 and once by Ch. 266. The two amendments may be inconsistent, in that Ch. 266 contains language that was deleted by Ch. 213; therefore, the com-

Amendment

Chapter 266, Laws 1963, substituted "The department of public institutions" at the beginning of the section for "The board."

38-109. (1421) Discharge of patients. The department of public institutions must cause to be discharged from the Montana state hospital any patient upon the written report of the hospital medical staff, that such patient is in satisfactory mental condition to be discharged. Such written report must be filed and kept in the office of the department, and every inmate on recovery must be ordered released, without requiring a sponsor.

History: En. Sec. 2283, Pol. C. 1895; re-en. Sec. 1124, Rev. C. 1907; re-en. Sec. 1421, R. C. M. 1921; amd. Sec. 1, Ch. 165, L. 1943; amd. Sec. 23, Ch. 266, L. 1963. Cal. Pol. C. Sec. 2189.

Opinion Required

The written opinion of the hospital medical board and not that of a ward doctor is essential for the release of a patient. Petition of Smith, 145 M 567, 403 P 2d 604.

Amendment

The 1963 amendment substituted "The department of public institutions" at the beginning of the section and "the department" in the second sentence for "the board" in both places; and deleted "for the insane" following "Montana state hospital."

References

Petition of Kolocotronis, 145 M 564 402 P 2d 977.

38-110. Maintenance of indigent persons on discharge. Upon the discharge of any patient of the Montana state hospital, the department shall notify the board of public welfare of the county from which such patient was committed, and the said county board of public welfare shall at once ascertain whether the discharged patient is in financial need, and if such

patient is found to be in financial need the county board of public welfare shall properly care for and maintain the discharged patient under the provision of the Public Welfare Act until such patient is able to care for himself or other provision has been made for such care.

History: En. Sec. 2, Ch. 165, L. 1943; amd. Sec. 24, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted "in addi-

tion to the financial aid required by section 1422" after "Montana state hospital"; and substituted "the department" for "the board" in the same place.

38-111. Repealed.

Repeal

This section (Sec. 3, Ch. 165, L. 1943; Sec. 1, Ch. 153, L. 1957), relating to the

medical examination of patients, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-118. (1429) Repealed.

Repeal

This section (Sec. 2291, Pol. C. 1895), relating to nonresident insane persons,

was repealed by Sec. 2, Ch. 198, Laws 1963 and by Sec. 10, Ch. 213, Laws 1963.

38-119. (1430) Insane person not indigent must be paid for. None but indigent persons must be received into the Montana state hospital unless their care and maintenance is paid or guaranteed by the parents, children, or guardians of such person.

History: En. Sec. 2292, Pol. C. 1895; re-en. Sec. 1133, Rev. C. 1907; re-en. Sec. 1430, R. C. M. 1921; amd. Sec. 25, Ch. 266, L. 1963.

Amendment

The 1963 amendment deleted a final

clause which read, "and all money received by the contractor for the care and maintenance of such persons must be accounted for in his settlement with the board."

38-120. Receipt of nonresident insane pending return to home state. An insane person, nonresident of this state, may be received into the Montana state hospital for a period not to exceed thirty (30) days pending return to the state of his residence.

History: En. Sec. 1, Ch. 198, L. 1963.

Title of Act

An act to permit reception of nonresident insane to state hospital pending return to state of residence and repealing section 38-118, Revised Codes of Montana, 1947.

Repealing Clause

Section 2 of Ch. 198, Laws 1963 read "Section 38-118, R.C.M. 1947, is hereby repealed."

CHAPTER 2—EXAMINATION OF PERSONS MENTALLY DERANGED —COMMITMENT

Section 38-207. Forms of certificates.

38-210. Moneys of insane person—disposal of.

38-201. (1431) Examination before magistrate—affidavit, etc.

Fairness of Inquisition

Petitioner who was committed to state hospital was not deprived of his constitutional rights where it appeared that district judge and court attendants went to

hospital to advise him of hearing date and his privilege to have counsel, his mother was present at the hearing, which was held in the hospital, and everything was done by the court to see that petitioner's

rights were protected and no advantage was taken of him. Petition of Kolocotronis, 145 M 564, 402 P 2d 977.

References

State v. Green, 143 M 234, 388 P 2d 362.

38-207. (1437) Forms of certificates. The certificate must be made in the form prescribed by, and if they can be had, upon blanks furnished by the state department of public institutions.

History: En. Sec. 2306, Pol. C. 1895; re-en. Sec. 1140, Rev. C. 1907; re-en. Sec. 1437, R. C. M. 1921; amd. Sec. 26, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" at the end of the section for "board of the commissioners for the insane."

38-210. (1440) Moneys of insane person—disposal of. When any person is adjudged to be insane and ordered committed to the Montana state hospital, or is adjudged to be in such a condition of mind that he should be placed in such hospital for observation, all moneys found on him at the time he is taken into custody must be certified to by the judge, and sent with such person to the hospital, to be delivered to the superintendent thereof, whose receipt therefor shall be taken by the officer or other person delivering him to the hospital, who must file such receipt with the clerk of the district court of the county in which the proceedings were had. If the amount exceeds one hundred dollars (\$100.00), the excess must be applied to the payment of the expenses of such person while in the hospital. If the amount is one hundred dollars (\$100.00) or less it must be kept and delivered to the person when discharged or released from the hospital or applied in payment of funeral expenses if such person dies while in such hospital. If any amount standing to the credit of any person paroled, discharged or released, or after payment of the funeral expenses of such person who dies while in such hospital, shall remain unclaimed for one (1) year after such parole, discharge, release or death, fifty per centum (50%) of such amount, but not in any event exceeding fifty dollars (\$50.00) shall be withdrawn from such account and placed in the agency fund in the state treasury, to be expended for indigent patients at such times and in such manner and for such purposes as may be prescribed by the superintendent of such hospital. Any balance remaining to the credit of any such person, shall be transmitted to the county treasurer of the county from which said person was sent, and if any sum remains after paying the costs of hearing, and transportation to the hospital, the balance shall be paid into the state treasury to the credit of the general fund.

History: Ap. p. Sec. 2309, Pol. C. 1895; amd. Sec. 6, p. 164, L. 1897; re-en. Sec. 1143, Rev. C. 1907; re-en. Sec. 1440, R. C. M. 1921; amd. Sec. 6, Ch. 117, L. 1939; amd. Sec. 2, Ch. 76, L. 1943; amd. Sec. 231, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the agency fund in the state treasury" for "the patients' deposit account, special account" in the fourth sentence.

38-214. (1444) Repealed.

Repeal

This section (Sec. 8, p. 165, L. 1897; Sec. 9, Ch. 117, L. 1939; Sec. 3, Ch. 76, L. 1943; Sec. 1, Ch. 40 L. 1955; Sec. 1,

Ch. 131, L. 1959), relating to the expense of maintenance of inmates of the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 3—TRANSFER OF STATE HOSPITAL PATIENTS TO STATE TRAINING SCHOOL AT BOULDER

38-304. Repealed.

Repeal

This section (Sec. 3, Ch. 10, L. 1943), relating to the expense of clothing per-

sons transferred to the state training school, was repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 4—EXAMINATION AND COMMITMENT OF PERSON AS MENTALLY DERANGED BUT NOT DANGEROUS—VOLUNTARY APPLICATION FOR ADMISSION

Section 38-406.1. Voluntary admission for diagnosis and treatment of mental illness—definitions.

38-406.2. Voluntary admission for at least sixty days authorized—application—earlier release—proceedings for judicial commitment—right to release—costs of commitment proceedings—transportation costs.

38-406. Repealed.

Repeal

Section 38-406 (Sec. 6, Ch. 157, L. 1943; Sec. 1, Ch. 33, L. 1953), relating to the procedure for voluntary application for

admission to state hospital for treatment of mental condition, was repealed by Sec. 3, Ch. 102, Laws 1969.

38-406.1. Voluntary admission for diagnosis and treatment of mental illness—definitions. As used in this act unless the context indicates otherwise: (1) "Mental illness" means a psychiatric or other disease which substantially impairs mental health.

(2) "Patient" means a person admitted or committed to the Warm Springs state hospital for observation, diagnosis, care or treatment.

(3) "Prospective patient" means a person whose hospitalization is sought under the provisions of this act.

(4) "Hospital" means the Warm Springs state hospital.

(5) "Superintendent" means the superintendent of Warm Springs state hospital.

History: En. Sec. 1, Ch. 102, L. 1969.

Title of Act

An act to provide a procedure for voluntary admission to the Warm Springs state hospital which does not require approval of the district court judge; providing for a sixty-day compulsory period of detention authorizing earlier release or dis-

charge; and providing that proceedings for judicial commitment need not be commenced unless there is a request in writing for the patient's release after the sixty-day compulsory detention; repealing section 38-406, R. C. M. 1947, and repealing section 38-410, R. C. M. 1947, which has been superseded by Title 80, chapter 16, R. C. M. 1947.

38-406.2. Voluntary admission for at least sixty days authorized—application—earlier release—proceedings for judicial commitment—right to release—costs of commitment proceedings—transportation costs.

(1) Subject to the availability of suitable accommodations, the superintendent shall admit to the hospital a person who is mentally ill or who has symptoms of mental illness for whom voluntary application is made in accordance with subsection (2) of this section.

(2) An application for voluntary admission to the hospital shall:

(a) Be on forms prescribed by the hospital and furnished by the hospital to the county attorney;

(b) Be signed before two witnesses by the prospective patient, or in the case of a minor, by his parent or guardian;

(c) Be certified by a licensed physician who has personally examined the prospective patient and believes he is mentally ill or has symptoms of mental illness or is in need of psychiatric evaluation and treatment; and

(d) Contain a statement by the prospective patient, or his parent or guardian that, unless earlier released on convalescent status or discharged, the prospective patient will remain in the hospital for diagnosis and treatment for at least sixty (60) days.

(3) If in the opinion of the superintendent detention of the patient for the entire sixty (60) day period is unnecessary, the superintendent may release or discharge the patient.

(4) Proceedings for judicial commitment shall not be commenced with respect to a person admitted on voluntary application unless after the sixty (60) day period of compulsory detention the patient requests his release in writing or whose release is requested in writing by his parent, guardian, spouse, or next of kin. Upon receipt of such a request, the patient shall be released within five (5) days after the request is received unless the superintendent files a petition with the district court of the third judicial district in the county of Deer Lodge certifying that in his opinion the release of the patient would be unsafe for the patient or others, or that the patient is in need of care and treatment in the hospital and because of his illness lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization.

(5) The superintendent of the hospital shall inform patients of their right to release as provided in this section.

(6) The costs of commitment proceedings under this section shall be paid by the county of the patient's residence. When the proceedings are completed, the clerk of the district court for the county of Deer Lodge shall send all papers relating to the proceedings to the clerk of the district court of the county of the patient's residence.

(7) The costs of transportation to the hospital under this section shall be provided by the patient, his parents, guardian, or the welfare department of the county of the patient's residence.

History: En. Sec. 2, Ch. 102, L. 1969.

Repealing Clause

Section 3 of Ch. 102, Laws 1969 read "Sections 38-406 and 38-410, R. C. M. 1947, are repealed."

38-409. Repealed.

Repeal

This section (Sec. 9, Ch. 157, L. 1943), relating to investigations of the financial

worth of persons committed or admitted to the Montana state hospital, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-410. Repealed.

Repeal

Section 38-410 (Sec. 1, Ch. 129, L. 1955), relating to the procedure for determining

financial ability of applicant for admission to state hospital, was repealed by Sec. 3, Ch. 102, Laws 1969.

38-411, 38-412. Repealed.**Repeal**

These sections (Secs. 2, 3, Ch. 129, L. 1955), relating to the charges for care and maintenance of persons voluntarily

admitted to the Montana state hospital, were repealed by Sec. 10, Ch. 213, Laws 1963.

CHAPTER 5—CONVALESCENT LEAVE OF PATIENTS

Section 38-502. Convalescent leave of patients from Montana state hospital.

38-504. Termination of convalescent leave.

38-505. Report by person under whom patient is placed on convalescent leave.

38-502. Convalescent leave of patients from Montana state hospital.

The superintendent of the Montana state hospital may grant a convalescent leave to a patient under general conditions prescribed by the state department of public institutions.

History: En. Sec. 2, Ch. 145, L. 1941; amd. Sec. 1, Ch. 152, L. 1957; amd. Sec. 27, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" at the end of the section for "state board of commissioners for the insane."

38-504. Termination of convalescent leave. All such patients, while on convalescent leave, shall remain in the legal custody, and under the control of the state department of public institutions, and at any time during such convalescent leave, upon evidence satisfactory to the superintendent or to the state department of public institutions, that convalescent leave should terminate, such patient must be returned to the Montana state hospital. The written order of the state department of public institutions, certified by the superintendent of the hospital, shall be sufficient warrant to any officer to retake and return such patient to actual custody in the Montana state hospital.

History: En. Sec. 4, Ch. 145, L. 1941; amd. Sec. 3, Ch. 152, L. 1957; amd. Sec. 28, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" in three places for "state board of commissioners for the insane."

38-505. Report by person under whom patient is placed on convalescent leave. The person to whom such person shall be placed on convalescent leave shall report the physical, moral and mental condition of the patient to the superintendent either in person or by writing as often and as fully as the superintendent may require, and subject to such recommendations and regulations as the state department of public institutions may determine. In case of failure so to report on request, the inmate may be returned to the Montana state hospital. The patient shall be accessible to representatives of the hospital.

History: En. Sec. 5, Ch. 145, L. 1941; amd. Sec. 4, Ch. 152, L. 1957; amd. Sec. 29, Ch. 266, L. 1963.

Amendment

The 1963 amendment substituted "state department of public institutions" for "state board of commissioners for the insane" near the end of the first sentence.

CHAPTER 6—EUGENICAL STERILIZATION LAW

(Repealed—Section 1, Chapter 310, Laws of 1969)

38-601 to 38-608. (1444.1 to 1444.8) Repealed.**Repeal**

Sections 38-601 to 38-608 (Secs. 1 to 8, Ch. 164, L. 1923), known as the Eugenical

Sterilization Law, were repealed by Sec. 1, Ch. 310, Laws 1969, effective March 11, 1969.

CHAPTER 7—ALCOHOLISM SERVICES CENTER

(Repealed—Section 15, Chapter 112, Laws of 1963; Section 101, Chapter 199, Laws of 1965)

38-701 to 38-711. (1445 to 1455) Repealed.**Repeal**

These sections (Secs. 1, 2, 4 to 12, Ch. 139, L. 1911; Secs. 1, 2, Ch. 130, L. 1955) relating to the state hospital for inebriates, were repealed by Sec. 15, Ch. 112, Laws

1963. Section 38-702 was also repealed by Sec. 82, Ch. 266, Laws 1963, and sections 38-707 and 38-708 were also repealed by Sec. 10, Ch. 213, Laws 1963.

38-712 to 38-724. Repealed.**Repeal**

These sections (Secs. 1 to 13, Ch. 112, L. 1963), relating to the alcoholism serv-

ices center, were repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 8—MONTANA STATE TRAINING SCHOOL AND HOSPITAL

(Repealed—Section 10, Chapter 213, Laws of 1963; Section 82, Chapter 266, Laws of 1963 and Section 101, Chapter 199, Laws of 1965)

38-801. Repealed.**Repeal**

This section (Sec. 1, Ch. 183, L. 1943; Sec. 1, Ch. 37, L. 1959), relating to the

establishment of the Montana state training school and hospital, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-802. Repealed.**Repeal**

This section (Sec. 2, Ch. 183, L. 1943; Sec. 54, Ch. 266, L. 1963), describing the

purposes of the state training school and hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-803. Repealed.**Repeal**

This section (Sec. 3, Ch. 183, L. 1943), relating to the powers and duties of the

state board of education, was repealed by Sec. 82, Ch. 266, Laws 1963.

38-804 to 38-807. Repealed.**Repeal**

These sections (Secs. 4 to 7, Ch. 183, L. 1943; Secs. 55, 56, Ch. 266, L. 1963), relating to the powers of the superin-

tendent and to admissions to the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-808, 38-809. Repealed.**Repeal**

These sections (Secs. 8, 9, Ch. 183, L. 1943; Sec. 1, Ch. 186, L. 1953; Sec. 1,

Ch. 73, L. 1959), relating to payment of expenses by inmates or their parents, were repealed by Sec. 10, Ch. 213, Laws 1963.

38-809.1. Repealed.**Repeal**

This section (Sec. 2, Ch. 73, L. 1959), relating to county investigation of the financial condition of persons responsible

for the expense of maintenance of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-810, 38-811. Repealed.**Repeal**

These sections (Secs. 10, 11, Ch. 183, L. 1943), relating to the procedure for

commitment to the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-812. Repealed.**Repeal**

This section (Sec. 12, Ch. 183, L. 1943; Sec. 2, Ch. 186, L. 1953; Sec. 3, Ch. 73, L.

1959), relating to orders for support of inmates of the school, was repealed by Sec. 10, Ch. 213, Laws 1963.

38-813 to 38-816. Repealed.**Repeal**

These sections (Secs. 13 to 16, Ch. 183, L. 1943; Sec. 9, Ch. 213, L. 1963), relating to admission to and discharge and trans-

fer from the state training school and hospital, were repealed by Sec. 101, Ch. 199, Laws 1965.

38-817, 38-818. Repealed.**Repeal**

These sections (Secs. 17, 18, Ch. 183, L. 1943), relating to the executive board of the training school, and containing a

repeal of early laws pertaining to the school, were repealed by Sec. 82, Ch. 266, Laws 1963.

38-819. Repealed.**Repeal**

This section (Sec. 1, Ch. 11, L. 1943), relating to the transfer of inmates from

the state training school to the state hospital, was repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 9—LEASES OF FARM LAND FOR STATE HOSPITAL AND STATE PENITENTIARY AUTHORIZED

(Repealed—Section 82, Chapter 266, Laws of 1963)

38-901, 38-902. Repealed.**Repeal**

These sections (Secs. 1, 2, Ch. 209, L. 1943), relating to leases of farm land for

the state hospital and state prison, were repealed by Sec. 82, Ch. 266, Laws 1963.

CHAPTER 10—STATE DEPARTMENT OF MENTAL HYGIENE

(Repealed—Section 101, Chapter 199, Laws of 1965)

38-1001 to 38-1003. Repealed.**Repeal**

These sections (Secs. 1 to 3, Ch. 103, L. 1947; Sec. 30, Ch. 266, L. 1963), establish-

ing a state department of mental hygiene, were repealed by Sec. 101, Ch. 199, Laws 1965.

CHAPTER 11—HOME FOR SENILE MEN AND WOMEN

38-1101. Repealed.**Repeal**

This section (Sec. 6, Ch. 206, L. 1949; Sec. 57, Ch. 266, L. 1963), defining terms

for purposes of the chapter, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-1106. Repealed.**Repeal**

This section (Sec. 11, Ch. 206, L. 1949; Sec. 2, Ch. 230, L. 1959), relating to the

maintenance of inmates of the home for senile men and women, was repealed by Sec. 101, Ch. 199, Laws 1965.

38-1108 to 38-1112. Repealed.**Repeal**

These sections (Secs. 13 to 17, Ch. 206, L. 1949; Sec. 3, Ch. 230, L. 1959; Sec. 58, Ch. 266, L. 1963), relating to commitment,

transfer and release of inmates of the home for senile men and women, were repealed by Sec. 101, Ch. 199, Laws 1965.

TITLE 39—INSTRUMENTS, ACKNOWLEDGMENT AND PROOF

Chapter 1. Acknowledgment and proof of instruments, 39-135 to 39-137.

CHAPTER 1—ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS

- Section 39-135. Validation of unacknowledged deeds executed before 1965.
39-136. Validation of unacknowledged deeds executed before 1967.
39-137. Validation of unacknowledged deeds executed before 1969.

39-135. Validation of unacknowledged deeds executed before 1965.

All deeds to real property heretofore executed in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 123, L. 1965. conclusive evidence of title against the grantors, containing a repealing clause.

Title of Act

An act validating deeds and conveyances heretofore made which are defective in execution or acknowledgment, providing that such instruments shall be con-

Repealing Clause

Section 2 of Ch. 123, Laws 1965 repealed all acts and parts of acts in conflict therewith.

39-136. Validation of unacknowledged deeds executed before 1967.

All deeds to real property executed prior to January 1, 1967 in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 183, L. 1967. are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

Title of Act

An act validating deeds and conveyances made prior to January 1, 1967 which

39-137. Validation of unacknowledged deeds executed before 1969.

All deeds to real property executed prior to January 1, 1969, in this state, or any state or territory of the United States, provided no action is now pending to set aside any such deed, which shall have been signed by the grantors in due form, shall be sufficient in law to convey the

legal title to the premises therein described from the grantors to the grantees, without any other execution or acknowledgment or witnesses thereto whatever; and such deeds so executed shall be received in evidence in all courts in this state, and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

History: En. Sec. 1, Ch. 77, L. 1969.

Title of Act

An act validating deeds and conveyances made prior to January 1, 1969,

which are defective in execution or acknowledgment, providing that such instruments shall be conclusive evidence of title against the grantors.

TITLE 40—INSURANCE AND INSURANCE COMPANIES

- Chapter 27. The commissioner of insurance, 40-2709, 40-2716, 40-2717, 40-2726.
28. Authorization of insurers and general requirements, 40-2820 to 40-2822.
30. Assets and liabilities, 40-3011.
33. Agents, solicitors and adjusters, 40-3308 to 40-3311, 40-3313, 40-3314, 40-3321, 40-3328, 40-3332 to 40-3338.
35. Trade practices and frauds, 40-3506, 40-3512.
36. Rates and rating organizations, 40-3634 to 40-3669.
38. Life insurance and annuities, 40-3802, 40-3831.
39. Group life insurance, 40-3905.1, 40-3906.
41. Group and blanket disability insurance, 40-4108, 40-4109.
42. Credit life and disability insurance, 40-4203, 40-4211.
44. Casualty insurance contracts, 40-4402 to 40-4404.
47. Organization and corporate procedures of stock and mutual insurers, 40-4751 to 40-4758.
48. Farm mutual insurers, 40-4804.
54. Extended health insurance for older persons, 40-5401 to 40-5408.
55. Insurance Holding Act, 40-5501 to 40-5508.
56. Workmen's compensation insurance premium rates, 40-5601 to 40-5618.

CHAPTER 17—SURETY COMPANIES

40-1727. (6236) Repealed.

Repeal

This section (Sec. 3, Ch. 6, L. 1911; Sec. 1, Ch. 145, L. 1923; Sec. 1, Ch. 45, L. 1935; Sec. 19, Ch. 177, L. 1965), relating to the official bonds of county,

and township officers, was repealed by Sec. 10, Ch. 68, Laws 1967. For new provisions relating to bonds of county officers and employees, see sec. 6-203 et seq.

CHAPTER 26—SCOPE OF CODE

40-2611. Exempted organizations, activities.

Compiler's Notes

Section 15-1401, referred to in this sec-

tion in the parent volume, was repealed by Sec. 98, Ch. 198, Laws 1967.

40-2617. General penalty.

Applicability

Separate penalty section here provided is applicable to violation of section 40-4011 requiring prompt payment of claims.

State ex rel. Larson v. District Court, Eighth Judicial District, 149 M 131, 423 P 2d 598.

CHAPTER 27—THE COMMISSIONER OF INSURANCE

- Section 40-2709. General powers, duties.
40-2716. Examination reports.
40-2717. Examination expense.
40-2726. Fees and licenses.

40-2709. General powers, duties. (1) to (3). * * * [Same as parent volume.]

(4) The commissioner may, after having conducted a hearing, pursuant to section 40-2720, impose a fine not to exceed the sum of five

thousand dollars (\$5,000) upon a person found to have violated any provision of this code or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed five hundred dollars (\$500). Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of section 40-2725.

(5) The commissioner shall have such additional powers and duties as may be provided by other laws of this state.

History: En. Sec. 28, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 16, L. 1969.

Amendments

The 1969 amendment inserted subsection (4) and redesignated former subsection (4) as subsection (5).

40-2712. Repealed.

Repeal

Section 40-2712 (Sec. 31, Ch. 286, L. 1959), relating to the commissioner's an-

nual report, was repealed by Sec. 44, Ch. 93, Laws 1969.

40-2716. Examination reports. (1) and (2). * * * [Same as parent volume.]

(3) Any director, officer, agent or employee of any company who destroys any books, records or documents required to be kept by law for the purpose of hindering any examination in violation of the requirements of this section shall be punished by a fine of not more than one thousand dollars (\$1,000), and, after a hearing thereon for that purpose, the commissioner may revoke the certificate of authority of such company.

(4) The commissioner shall furnish a copy of the proposed report to the person examined not less than twenty (20) days prior to filing the same in his office. If such person so requests in writing within such twenty-day period, the commissioner shall grant a hearing with respect to the report, and shall not so file the report until after the hearing and after such modifications, if any, have been made therein as the commissioner deems proper.

(5) The report when so verified and filed shall be presumptive evidence, in any action or proceeding brought by the commissioner against the person examined, or against its officers or agents, of the facts stated therein. The commissioner and his examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the commissioner's office.

(6) The commissioner may withhold from public inspection any examination or investigation report for so long as he deems such withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest.

(7) If he deems such to be in the public interest the commissioner may publish any such examination report or a summary thereof in one or more newspapers in the state.

History: En. Sec. 35, Ch. 286, L. 1959; **Amendments**
amd. Sec. 1, Ch. 28, L. 1967.

The 1967 amendment inserted a new subsection (3) and redesignated former subsections (3) through (6) as present subsections (4) through (7).

40-2717. Examination expense. (1). * * * [Same as parent volume.]

(2) The commissioner shall pay to the state treasurer to the credit of the general fund all moneys received pursuant to subsection (1) above.

(3). * * * [Same as parent volume.]

History: En. Sec. 36, Ch. 286, L. 1959; **Amendment**
amd. Sec. 72, Ch. 147, L. 1963.

The 1963 amendment rewrote subsection (2). For previous text, see parent volume.

40-2726. Fees and licenses. (1) The commissioner shall collect in advance, and the persons so served shall so pay to the commissioner, the following fees and licenses:

(a) Certificates of authority.

(i). * * * [Same as parent volume.]

(ii) Annual continuation of certificate of authority-----300.00

(iii). * * * [Same as parent volume.]

(b) (i) and (ii). * * * [Same as parent volume.]

(c) and (d). * * * [Same as parent volume.]

(e) (i) to (iv). * * * [Same as parent volume.]

(f) (i) and (ii). * * * [Same as parent volume.]

(g) (i) to (iii). * * * [Same as parent volume.]

(h). * * * [Same as parent volume.]

(i) (i) and (ii). * * * [Same as parent volume.]

(j) (i) and (ii). * * * [Same as parent volume.]

(k) to (m). * * * [Same as parent volume.]

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 45, Ch. 286, L. 1959; **Amendments**
amd. Sec. 1, Ch. 32, L. 1969.

The 1969 amendment raised the fee for an annual continuation of certificate of authority provided in item (1)(a)(ii) from \$25 to \$300.

CHAPTER 28—AUTHORIZATION OF INSURERS AND GENERAL REQUIREMENTS

Section 40-2820. Annual statement.

40-2821. Tax.

40-2822. Resident agent required—countersignature—records—exceptions.

40-2818. Commissioner attorney for service of process.

Venue of Action

Statute cannot be construed, for purpose of venue, under statute providing that actions be tried in county in which defendants reside, as giving a foreign insurance company residency in county

of insurance commissioner, serving as agent of insurance company for service of process. *Truck Ins. Exchange v. National Farmers Union Property & Cas. Co.*, 149 M 357, 427 P 2d 50.

40-2820. Annual statement. (1) to (3). * * * [Same as parent volume.]

(4) Any director, officer or agent or employee of any company who subscribes to, makes, or concurs in making, or publishing, any annual statement, or any other statement required by law, knowing the same to contain any material statement which is false shall be punished by a fine of not more than one thousand dollars (\$1,000).

(5) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in section 40-2726.

History: En. Sec. 65, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 27, L. 1967.

Amendments

The 1967 amendment added a new subsection (4) and redesignated former subsection (4) as present subsection (5).

40-2821. Tax. (1). * * * [Same as parent volume.]

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums, the tax to be computed at the rate of two per cent (2%) of such premiums; provided that for each of the calendar years 1969 and 1970 the tax shall be computed at the rate of two and three-quarters per cent (2¾%) of such premiums.

Provided, that where any insurer has not less than fifty per cent (50%) of its paid-in capital stock invested in Montana securities, the insurer shall be allowed to deduct whatever tax it may have already paid to the state of Montana and its political subdivisions, during the same calendar year as to which premium tax is being paid, from the amount otherwise due under this section. For the purpose of this provision "paid-in capital stock" as to a mutual or reciprocal insurer shall be deemed to be an amount equal to ten per cent (10%) of the insurer's assets; and "Montana securities" shall be deemed to include only general obligations of the state of Montana or of its political subdivisions, mortgage loans secured by a first lien upon real estate located in Montana, and real estate located in Montana owned by the insurer, all if otherwise lawful investments of the insurer under this code.

(3) to (8). * * * [Same as parent volume.]

History: En. Sec. 66, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 160, L. 1961; amd. Sec. 1, Ch. 78, L. 1963; amd. Sec. 1, Ch. 26, L. 1965; amd. Sec. 1, Ch. 71, L. 1967; amd. Sec. 1, Ch. 358, L. 1969.

The 1967 amendment substituted "1967 and 1968" for "1965 and 1966" in the proviso to the first paragraph of subsection (2).

The 1969 amendment, in subsection (2), substituted "1969 and 1970" for "1967 and 1968" and "two and three-quarters per cent (2¾%)" for "two and one-quarter per cent (2¼%)."

Amendments

The 1963 amendment substituted "1963 and 1964" for "1961 and 1962" in the proviso to the first paragraph of subsection (2).

The 1965 amendment substituted "1965 and 1966" for "1963 and 1964" in the proviso to the first paragraph of subsection (2).

Cross-Reference

Payments to cities and towns from proceeds of tax on motor vehicle insurance premiums, secs. 11-1834 to 11-1837.

40-2822. Resident agent required—countersignature—records—exceptions. (1) and (2). * * * [Same as parent volume.]

(3) This section shall not apply to:

(a) Reinsurance.

(b) Life insurance, disability insurance or annuity contracts.

(c) Insurance of the rolling stock, vessels or aircraft of any common carrier in interstate or foreign commerce, or of any vehicle principally garaged and used in another state, or covering any liability or other risks incident to the ownership, maintenance or operation thereof.

(d) Insurance of property in course of transportation interstate or in foreign trade, or any liability or risk incident thereto.

(e) Insurance of wet marine and transportation risks.

(f) With respect to countersignature to policies issued through agents compensated only by salary or issued by insurers not using agents in the general solicitation of business.

(g) Bid bonds, as required under section 6-501, R.C.M. 1947.

(4). * * * [Same as parent volume.]

History: En. Sec. 67, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 72, L. 1963.

Amendment

The 1963 amendment added clause (g) to subsection (3).

CHAPTER 30—ASSETS AND LIABILITIES

Section 40-3011. Standard valuation law—life insurance.

40-3011. Standard valuation law—life insurance. (1) and (2). * * *
[Same as parent volume.]

(3) This subsection shall apply to only those policies and contracts issued on or after the operative date of section 40-3831 (the standard nonforfeiture law).

(a) The minimum standard for the valuation of all such policies and contracts shall be the commissioner's reserve valuation method defined in subdivision (b), three and one-half per cent (3½%) interest, and the following tables:

(i). * * * [Same as parent volume.]

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 standard industrial mortality table for such policies issued prior to the operative date of subsection (8-b) of section 40-3831 (the standard nonforfeiture law) as amended, and the commissioners 1961 standard industrial mortality table for such policies issued on or after such operative date.

(iii) to (vii). * * * [Same as parent volume.]

(b) and (c). * * * [Same as parent volume.]

(d) Reserves for any category of policies, contracts or benefits as established by the commissioner, may be calculated at the option of the insurer according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Provided,

however, that reserves for participating life insurance policies may, with the consent of the commissioner, be calculated according to a rate of interest [lower than the rate of interest] used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than one-half per cent ($\frac{1}{2}\%$) the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

(e). * * * [Same as parent volume.]

History: En. Sec. 92, Ch. 286, L. 1959; amd. Sec. 1, Ch. 61, L. 1961; amd. Sec. 1, Ch. 41, L. 1965.

Compiler's Note

The compiler has inserted the bracketed words "lower than the rate of interest" in paragraph (3) (d). These words did not appear in the 1965 amendatory act, apparently through clerical error.

Amendment

The 1965 amendment added at the end of paragraph (3) (a) (ii) the words "for such policies issued prior to the operative

date of subsection (8-b) of section 40-3831 (the standard nonforfeiture law) as amended, and the commissioners 1961 standard industrial mortality table for such policies issued on or after such operative date"; and, apparently through clerical error, deleted from paragraph (3) (d) the words enclosed above in brackets.

Effective Date

Section 2 of Ch. 41, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

CHAPTER 33—AGENTS, SOLICITORS AND ADJUSTERS

- Section 40-3308. General qualifications, resident agents and solicitors—other than life insurance agents.
- 40-3309. General qualification for license as life or disability insurance agent.
- 40-3310. Licensing of firms and corporations.
- 40-3311. Licensing of resident agents' association.
- 40-3313. Examination.
- 40-3314. Conduct of examinations.
- 40-3321. Special requirements as to solicitors.
- 40-3328. Continuance, expiration of licenses.
- 40-3332. Acting as insurance agent, solicitor, or adjuster without license—penalty.
- 40-3333. Nonresident agent may be licensed—reciprocity.
- 40-3334. Nonresident agent's right to solicit business contingent upon reciprocal arrangement.
- 40-3335. Nonresident agent must be licensed in state of residence—limitation as to insurers which may be represented—certification by state of residence.
- 40-3336. Limitations as to coverage.
- 40-3337. Commissioner as attorney in fact of nonresident agent to accept service of process.
- 40-3338. Nonresident agent subject to provisions of the Montana Insurance Code.

40-3308. General qualifications, resident agents and solicitors—other than life insurance agents. (1) For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any resident agent or solicitor license as to insurance other than life or disability, except in compliance with this chapter, or as to any individual not qualified therefor as follows:

(a) and (b). * * * [Same as parent volume.]

(c) If for a resident agent's license, must have been appointed as agent by an authorized insurer, subject to issuance of the license.

(d) If for a solicitor's license, must have been appointed as solicitor by a licensed resident agent, subject to issuance of the license, and intend to make and make the soliciting of insurance a principal vocation.

(e) to (h). * * * [Same as parent volume.]

(2) In determining the qualifications as to competence, training, experience and knowledge of the provisions of this code governing his operations as a resident insurance agent or solicitor, as provided for in subsection (1) above, of applicant agents or solicitors proposing to represent as such only insurers who confine their business in this state substantially to the insuring of the property, interests and risks of farmers, the commissioner shall relate such qualifications only to the kinds of insurance policies which the applicant will handle as such a licensee.

History: En. Sec. 152, Ch. 286, L. 1969;
amd. Sec. 7, Ch. 44, L. 1969.

Amendments

The 1969 amendment inserted "resident" before "agent" where the references appear.

40-3309. General qualification for license as life or disability insurance agent. For the protection of the people of this state the commissioner shall not issue, continue, or permit to exist any agent license as to life or disability insurance except in compliance with this chapter or as to any individual not qualified therefor as follows:

(1). * * * [Same as parent volume.]

(2) Must be a resident in and of this state; or of another state, if by reciprocal arrangements made by the commissioner with such other state similar privileges therein are granted to residents of this state.

(3) to (8). * * * [Same as parent volume.]

History: En. Sec. 153, Ch. 286, L. 1959;
amd. Sec. 8, Ch. 44, L. 1969.

sentence of subsection (2) which designated the commissioner as attorney-in-fact of any nonresident agent for acceptance of service of process.

Amendments

The 1969 amendment omitted the second

40-3310. Licensing of firms and corporations. (1). * * * [Same as parent volume.]

(2) A nonresident of Montana shall not be named in such license and shall not have the right to exercise the license powers.

(3) A license shall not be issued to a firm or corporation unless organized under the laws of this state and maintaining its principal place of business in this state, and unless the transaction of business under the license is within the purposes stated in the firm's partnership agreement or the corporation's articles.

(4) The licensee shall promptly notify the commissioner of all changes among its members, directors, and officers and of any other individual designated in the license.

History: En. Sec. 154, Ch. 286, L. 1959; **Amendments**
amd. Sec. 9, Ch. 44, L. 1969.

The 1969 amendment inserted subsection (2) and redesignated former subsections (2) and (3) as subsections (3) and (4).

40-3311. Licensing of resident agents' association. (1) The commissioner may license as a resident agent as to kinds of insurance other than life and disability, any association of licensed Montana insurance agents, whether or not incorporated, and formed and existing for substantial purposes other than as to such license.

(2) The license shall be used solely for the purpose of enabling any such association to place, as resident agent, insurance of the properties, interests and risks of the state of Montana and of other public agencies, bodies and institutions, and to receive the customary commission thereon.

(3). * * * [Same as parent volume.]

(4) The license powers may be exercised by such resident agents as may be appointed from time to time for the purpose of the association's board of trustees. The association shall forthwith file the names of such appointees with the commissioner. The names of such appointees need not appear in the license.

(5) The fee for such license shall be the same as for the license of an individual resident agent.

(6) Under the license the association may place insurance with any insurer represented as resident agent by any member of the association, and without requiring that the association have an appointment as resident agent by any such insurer; otherwise, the license shall be subject to the same requirements and prohibitions as apply to individual resident agent licenses.

(7) The commissioner may, after a hearing with notice thereof to the association only (and without notice to the individual officers or members of the association), revoke the license if he finds that continuation thereof is not in the public interest, or for such other applicable grounds as are available under this chapter in the case of individuals licensed as resident agents.

History: En. Sec. 155, Ch. 286, L. 1959; **Amendments**
amd. Sec. 10, Ch. 44, L. 1969.

The 1969 amendment inserted "resident" before "agent" where the references appear.

40-3313. Examination. (1) and (2). * * * [Same as parent volume.]

(3) (a) to (f). * * * [Same as parent volume.]

(4). * * * [Same as parent volume.]

(5) This section shall not apply to, and no such examination shall be required of:

(a) and (b). * * * [Same as parent volume.]

(c) Any applicant for license as nonresident agent, subject to reciprocal arrangements as provided for in this code.

(d). * * * [Same as parent volume.]

(e) (i) and (ii). * * * [Same as parent volume.]

(f) and (g). * * * [Same as parent volume.]

History: En. Sec. 157, Ch. 286, L. 1959;
amd. Sec. 11, Ch. 44, L. 1969.

Amendments

The 1969 amendment rewrote subdivision (5)(c) which provided exemption from examination for "Nonresident applicants for license as life insurance agents."

40-3314. Conduct of examinations. (1) The commissioner shall make any examination required under section 40-3313 available to applicants with reasonable frequency, and at place in this state reasonably accessible to such applicants. The commissioner shall make any such examination available at his offices at Helena, Montana, at times within his discretion, but at least once a month.

(2) to (4). * * * [Same as parent volume.]

History: En. Sec. 158, Ch. 286, L. 1959;
amd. Sec. 1, Ch. 156, L. 1969.

Effective Date

Section 2 of Ch. 156, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

Amendments

The 1969 amendment substituted "at times within his discretion, but at least once a month" for "on each business day" at the end of subsection (1).

40-3321. Special requirements as to solicitors. (1) A solicitor shall not be appointed or licensed as to more than one resident agent.

(2) The solicitor's license shall cover all the kinds of insurance, other than life and disability insurance, for which the appointing resident agent is licensed; except, that the solicitor's license shall also cover disability insurance where written by a casualty, property, or surety insurer represented by the resident agent.

(3) A solicitor shall not concurrently be licensed as resident agent except as to life or disability insurance.

(4) A solicitor shall not have authority to bind risks or counter-sign policies.

(5) The transactions of a solicitor under his license shall be in the name of the resident agent by whom appointed, and such resident agent shall be responsible for the acts or omissions of the solicitor within the scope of his appointment.

(6) The solicitor shall maintain his office with that of the appointing resident agent, and records of his transactions under the license shall be maintained as a part of the records of such resident agent.

(7) The solicitor's license shall remain in the custody of the resident agent by whom appointed. Upon termination of the appointment, the resident agent shall give written notice thereof to the commissioner and deliver the license to the commissioner for cancellation.

History: En. Sec. 165, Ch. 286, L. 1959;
amd. Sec. 12, Ch. 44, L. 1969.

Amendments

The 1969 amendment inserted "resident" before "agent" where the references appear.

40-3328. Continuance, expiration of licenses. (1) All solicitor and adjuster licenses issued under this chapter, all agent licenses as to life and/or disability insurance only, and all nonresident agent licenses shall continue in force until expired, suspended, revoked or terminated, but subject to payment to the commissioner annually on or before May 1 of the applicable continuation fee as stated in section 40-2726, accompanied by written request for such continuation. Such request for continuation as to agent licenses for life insurance and/or disability insurance only, shall be made by the insurer in the form of an alphabetical list in duplicate of the names and addresses of its agents whose licenses are to be continued in this state, accompanied by payment of the annual continuation fee therefor as provided in section 40-2726. At the same time the insurer shall also file with the commissioner an alphabetical list in duplicate of the names and addresses of all its agents whose licenses in this state are not to remain in effect. Section 40-3317 (5) shall apply as to any licenses so terminated by the insurer. As to a solicitor's license, such request shall be signed by the agent by whom the licensee is employed.

(2) to (4). * * * [Same as parent volume.]

History: En. Sec. 172, Ch. 286, L. 1959;
amd. Sec. 13, Ch. 44, L. 1969.

Amendments

The 1969 amendment inserted "all non-resident agent licensees" in the first sentence of subsection (1).

40-3332. Acting as insurance agent, solicitor, or adjuster without license—penalty. Any person, firm, association, or corporation who or which, in this state, acts as an insurance agent, solicitor, or adjuster, without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and fined five hundred dollars (\$500) or imprisoned in the county jail for ninety (90) days, or both such fine and imprisonment.

History: En. 40-3332 by Sec. 1, Ch.
256, L. 1967.

Title of Act

An act to provide a penalty for operating without a license as an insurance agent, solicitor, or adjuster.

40-3333. Nonresident agent may be licensed—reciprocity. The commissioner may license as an agent a person who is otherwise qualified under this code but who is not a resident of this state, if pursuant to the laws of the state of his residence a similar privilege is extended to persons resident in Montana.

History: En. Sec. 1, Ch. 44, L. 1969.

Title of Act

An act to provide for licensing nonresident insurance agents domiciled in states

which grant reciprocal privileges to Montana agents; amending sections 40-3308 through 40-3311, 40-3313, 40-3321 and 40-3328, R. C. M. 1947, to ensure that such sections apply to resident agents only.

40-3334. Nonresident agent's right to solicit business contingent upon reciprocal arrangement. A licensed nonresident agent shall not have the right to solicit business in Montana unless pursuant to a reciprocal

arrangement made by the commissioner with the insurance supervisory official of the licensee's state of residence.

History: En. Sec. 2, Ch. 44, L. 1969.

40-3335. Nonresident agent must be licensed in state of residence—limitation as to insurers which may be represented—certification by state of residence. An applicant for a nonresident license must be licensed in the state of his residence to act as agent for the kinds of insurance for which he applies for licensing in the state of Montana. The nonresident agent shall be licensed to represent only those insurers which he is licensed to represent in the state of his residence and which are licensed in the state of Montana. The insurance supervisory official of the applicant's state of residence must certify that the applicant is licensed and to the extent of the license.

History: En. Sec. 3, Ch. 44, L. 1969.

40-3336. Limitations as to coverage. A nonresident agent shall not sign nor countersign policies covering subjects of insurance located or to be performed in Montana. These policies must be countersigned by a licensed resident agent.

History: En. Sec. 4, Ch. 44, L. 1969.

40-3337. Commissioner as attorney in fact of nonresident agent to accept service of process. Application for and acceptance of a license as a nonresident agent shall constitute irrevocable appointment of the commissioner as the attorney in fact of said licensee to accept service of process issued in Montana in any action or proceeding against the licensee arising out of the licensing or out of transactions under the license. All process shall be served in duplicate upon the commissioner together with a fee of five dollars (\$5). The commissioner shall then promptly forward a copy of the service by registered mail to the licensee at his last known address. Such service shall constitute personal service upon the licensee.

History: En. Sec. 5, Ch. 44, L. 1969.

40-3338. Nonresident agent subject to provisions of the Montana Insurance Code. All nonresident licensees shall be subject to the provisions of the Montana Insurance Code as though a resident of this state unless otherwise provided.

History: En. Sec. 6, Ch. 44, L. 1969.

CHAPTER 35—TRADE PRACTICES AND FRAUDS

Section 40-3506. False financial statements.

40-3512. Unfair discrimination, rebates prohibited—property, casualty, surety insurances.

40-3506. False financial statements. (1). * * * [Same as parent volume.]

(2) No person shall make any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully

appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer, and any person who aids or abets in any such violation of this section shall be punishable, upon conviction, by a fine of one thousand dollars (\$1,000) or by imprisonment in the county jail for six (6) months, or both such fine and imprisonment.

History: En. Sec. 208, Ch. 268, L. 1959; person who aids or abets * * * or both
amd. Sec. 1, Ch. 29, L. 1967. such fine and imprisonment" at the end
of the section.

Amendments

The 1967 amendment added "and any

40-3512. Unfair discrimination, rebates prohibited—property, casualty, surety insurances. (1) and (2). * * * [Same as parent volume.]

(3) No such insurer shall make or permit any unfair discrimination either between insureds or property having like insuring or risk characteristics, or between insureds because of race, color, creed, or national origin, in the premium or rates charged for insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance.

(4). * * * [Same as parent volume.]

History: En. Sec. 214, Ch. 286, L. 1959; after "unfair discrimination" and "or be-
amd. Sec. 1, Ch. 191, L. 1969. tween insureds because of race, color,
creed, or national origin," after "risk
characteristics" in subsection (3).

Amendments

The 1969 amendment inserted "either"

CHAPTER 36—RATES AND RATING ORGANIZATIONS

- Section 40-3634. Purpose and intent of chapter.
40-3635. "Rating organization" defined.
40-3636. "Advisory organization" defined.
40-3637. "Member" and "subscriber" defined.
40-3638. "Willful" and "willfully" defined.
40-3639. Scope of chapter.
40-3640. Standards applicable to rates.
40-3641. Insurers authorized to act in concert.
40-3642. Admitted insurers with common ownership or management—matters relating to cosurety bonds.
40-3643. Use of rates, rating systems, underwriting rules and policy or bond forms of rating or advisory organizations—agreements to adhere thereto.
40-3644. Exchange of information or experience data—consultation with rating organizations and insurers.
40-3645. Agreements for apportionment of casualty insurance—approval of commissioner—review of practices of adherents—revocation of approval.
40-3646. Joint underwriters and reinsurers.
40-3647. Rating organizations.
40-3648. Evidence prerequisite to license.
40-3649. Examination of application and investigation of applicant—issuance of license.
40-3650. Rules governing eligibility for membership.
40-3651. Insurers with common ownership or management.
40-3652. Advisory organizations.

- 40-3653. Joint underwriting and joint reinsurance.
- 40-3654. Maintenance of records—necessity—contents—compliance with section—place of maintenance.
- 40-3655. Records and examination.
- 40-3656. Examination of admitted insurers.
- 40-3657. Examination of officers, managers, agents and employees.
- 40-3658. Payment of cost of examination.
- 40-3659. Review of rates.
- 40-3660. Noncompliance of rates.
- 40-3661. Hearings.
- 40-3662. Issuance of order—suspension or revocation of certificate or authority or license.
- 40-3663. Failure to comply with order—suspension or revocation of license or certificate.
- 40-3664. Appeals from the commissioner.
- 40-3665. Information not to be willfully withheld.
- 40-3666. Payment of dividends, etc., not prohibited or regulated—plan for payment not rating system.
- 40-3667. Acts, etc., done by authority of chapter not violation of other laws.
- 40-3668. Administration or enforcement of chapter—supplementation or modification.
- 40-3669. Recording and reporting of loss and expense experience.

40-3601 to 40-3633. Repealed.

Repeal

Sections 40-3601 to 40-3633 (Secs. 225 regulation of insurance rates, were repealed by Sec. 37, Ch. 362, Laws 1969. to 257, Ch. 286, L. 1959), relating to the

40-3634. Purpose and intent of chapter. The purpose of this chapter is to promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate or unfairly discriminatory, to authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers, and to authorize co-operation between insurers in rate-making and other related matters.

It is the express intent of this chapter to permit and encourage competition between insurers on a sound financial basis, and nothing in this chapter is intended to give the commissioner power to fix and determine a rate level by classification or otherwise.

History: En. Sec. 1, Ch. 362, L. 1969.

Title of Act

An act to provide for regulation of insurance rates and rating organizations, ad-

visory organizations and joint underwriting and joint reinsurance; and repealing sections 40-3601 through 40-3633, R. C. M. 1947.

40-3635. "Rating organization" defined. In this chapter "rating organization" means every person, other than an admitted insurer, whether located within or outside this state, who has as his object or purpose the making of rates, rating plans or rating systems. Two or more admitted insurers which act in concert for the purpose of making rates, rating plans or rating systems, and which do not operate within the specific authorizations contained in sections 9, 11, 12, 20 and 21 [40-3642, 40-3644, 40-3645, 40-3653 and 40-3654] shall be deemed to be a rating organization. No single insurer shall be deemed to be a rating organization.

History: En. Sec. 2, Ch. 362, L. 1969.

40-3636. "Advisory organization" defined. In this chapter "advisory organization" means every person, other than an admitted insurer, whether located within or outside this state, who prepares policy forms or makes underwriting rules incident to but not including the making of rates, rating plans or rating systems, or which collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate-making, capacity. No duly authorized attorney at law, acting in the usual course of his profession, shall be deemed to be an advisory organization.

History: En. Sec. 3, Ch. 362, L. 1969.

40-3637. "Member" and "subscriber" defined. Unless otherwise apparent from the context, in this chapter:

(a) "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory or other organization.

(b) "Subscriber" means an insurer which is furnished at its request (1) with rates and rating manuals by a rating organization of which it is not a member; or (2) with advisory services by an advisory organization of which it is not a member.

History: En. Sec. 4, Ch. 362, L. 1969.

40-3638. "Willful" and "willfully" defined. In this chapter "willful" or "willfully," in relation to an act or omission which constitutes a violation of this chapter, means with actual knowledge or belief that such act or omission constitutes such violation and with specific intent to commit such violation.

History: En. Sec. 5, Ch. 362, L. 1969.

40-3639. Scope of chapter. This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter shall apply to:

(1) Life insurance.

(2) Disability insurance.

(3) Reinsurance, except joint reinsurance as provided in section 20 [40-3653] of this chapter.

(4) Insurance against loss of or damage to aircraft, their hulls, accessories and equipment, or against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft.

(5) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.

(6) Title insurance.

(7) Workmen's compensation or employers' liability insurance written in connection with workmen's compensation.

History: En. Sec. 6, Ch. 362, L. 1969.

40-3640. Standards applicable to rates. The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided, and (2) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

No rate shall be held to be inadequate unless (1) such rate is unreasonably low for the insurance provided, and (2) the continued use of such rate endangers the solvency of the insurer using the same, or unless (3) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(b) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this state, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both country-wide and those specially applicable to this state, and to all other factors, including judgment factors, deemed relevant within and outside this state; and in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period for which such experience is available.

Consideration may also be given in the making and use of rates to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(c) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.

(d) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

History: En. Sec. 7, Ch. 362, L. 1969.

40-3641. Insurers authorized to act in concert. Subject to and in compliance with the provisions of this chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to

engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.

History: En. Sec. 8, Ch. 362, L. 1969.

40-3642. Admitted insurers with common ownership or management—matters relating to cosurety bonds. With respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research, two or more admitted insurers having a common ownership or operating in this state under common management or control, are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer, and to the extent that such matters relate to cosurety bonds, two or more admitted insurers executing such bonds are hereby authorized to act in concert between or among themselves the same as if they constituted a single insurer.

History: En. Sec. 9, Ch. 362, L. 1969.

40-3643. Use of rates, rating systems, underwriting rules and policy or bond forms of rating or advisory organizations—agreements to adhere thereto. Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules or policy or bond forms of such organizations, either consistently or intermittently, but, except as provided in sections 9, 12, 20 and 21 [40-3642, 40-3645, 40-3653 and 40-3654], shall not agree with each other or rating organizations or others to adhere thereto. The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement.

History: En. Sec. 10, Ch. 362, L. 1969.

40-3644. Exchange of information or experience data—consultation with rating organizations and insurers. Licensed rating organizations and admitted insurers are authorized to exchange information and experience data with rating organizations and insurers in this and other states and may consult with them with respect to rate-making and the application of rating systems.

History: En. Sec. 11, Ch. 362, L. 1969.

40-3645. Agreements for apportionment of casualty insurance—approval of commissioner—review of practices of adherents—revocation of approval. (a) Agreements may be made among admitted insurers with respect to the equitable apportionment among them of casualty insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure, such insurance through ordinary methods, and with respect to the use of reasonable rate modifications for such insurance, such agreements to be subject to the approval of the commissioner.

(b) All such agreements shall be submitted in writing to the commissioner for his consideration and approval, together with such information as he may reasonably require. The commissioner shall approve only such agreements as are found by him to contemplate (a) the use of rates which meet the standards prescribed by this chapter, and (b) activities and practices that are not unfair, unreasonable or otherwise inconsistent with the provisions of this chapter.

At any time after such agreements are in effect the commissioner may review the practices and activities of the adherents to such agreements and if, after a hearing upon not less than ten (10) days' notice to such adherents, he finds that any such practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this chapter, he may issue a written order to the parties to any such agreement, specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice. For good cause, and after hearing upon not less than ten (10) days' notice to the adherents thereto, the commissioner may revoke approval of any such agreement.

History: En. Sec. 12, Ch. 362, L. 1969.

40-3646. Joint underwriters and reinsurers. Upon compliance with the provisions of this chapter applicable thereto any rating organization, advisory organization, and any group, association or other organization of admitted insurers which engages in joint underwriting or joint reinsurance through such organization or by standing agreement among the members thereof, may conduct operations in this state. As respects insurance risks or operations in this state, no insurer shall be a member or subscriber of any such organization, group or association that has not complied with the provisions of this chapter applicable to it.

History: En. Sec. 13, Ch. 362, L. 1969.

40-3647. Rating organizations. No rating organization shall conduct its operations in this state without first filing with the commissioner a written application for, and securing a license to act as, a rating organization. Any rating organization may make application for and obtain a license as a rating organization if it shall meet the requirements for license set forth in this chapter. Every such rating organization shall file with its application (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regula-

tions governing the conduct of its business, all duly certified by the custodian or the originals thereof, (b) a list of its members and subscribers, (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served, and (d) a statement of its qualifications as a rating organization.

History: En. Sec. 14, Ch. 362, L. 1969.

40-3648. Evidence prerequisite to license. To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it will:

(a) Permit any admitted insurer to become a member of or a subscriber to such rating organization at a reasonable cost and without discrimination, or withdraw therefrom.

(b) Neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member or subscriber, as a condition to membership or subscribership, to adhere to its rates, rating plans, rating systems, underwriting rules or policy or bond forms.

(c) Neither adopt any rule nor exact any agreement, the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(d) Neither practice nor sanction any plan or act of boycott, coercion or intimidation.

(e) Neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business.

(f) Notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

(g) Comply with the provisions of section 21 [40-3654].

History: En. Sec. 15, Ch. 362, L. 1969.

40-3649. Examination of application and investigation of applicant—issuance of license. The commissioner shall examine each application for license to act as a rating organization and the documents filed therewith and may make such further investigation of the applicant, its affairs and its proposed plan of business as he deems desirable.

The commissioner shall issue the license applied for within sixty (60) days of its filing with him if, from such examination and investigation, he is satisfied that:

(a) The business reputation of the applicant and its officers is good.

(b) The facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish.

(c) The applicant and its proposed plan of operation conform to the requirements of this chapter.

Otherwise, but only after hearing upon notice the commissioner shall, in writing, deny the application and notify the applicant of his decision and his reasons therefor.

The commissioner may grant an application in part only and issue a license to act as a rating organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part or combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

Licenses issued pursuant to this section shall remain in effect until revoked as provided in this chapter.

History: En. Sec. 16, Ch. 362, L. 1969.

40-3650. Rules governing eligibility for membership. Subject to the approval of the commissioner, licensed rating organizations may make reasonable rules governing eligibility for membership.

History: En. Sec. 17, Ch. 362, L. 1969.

40-3651. Insurers with common ownership or management. If two or more insurers having a common ownership or operating in this state under common management are admitted for the classes or types of insurance for which a rating organization is licensed to make rates, the rating organization may require as a condition to membership or subscribership of one or more that all such insurers shall become members or subscribers.

History: En. Sec. 18, Ch. 362, L. 1969.

40-3652. Advisory organizations. No advisory organization shall conduct its operations in this state unless and until it has filed with the commissioner (a) a copy of its constitution, articles of incorporation, agreement or association, and of its bylaws or rules and regulations governing its activities, all duly certified by the custodian of the originals thereof; (b) a list of its members and subscribers; and (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

Every such advisory organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served.

No such advisory organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: En. Sec. 19, Ch. 362, L. 1969.

40-3653. Joint underwriting and joint reinsurance. Every group, association or other organization of insurers which engages in joint un-

derwriting or joint reinsurance through such group, association or organization, or by standing agreement among the members thereof, shall file with the commissioner (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing its activities, all duly certified by the custodian of the originals thereof, (b) a list of its members, and (c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served.

Every such group, association or other organization shall notify the commissioner promptly of every change in its constitution, its articles of incorporation, agreement or association, and its bylaws, rules and regulations governing the conduct of its business; its list of members; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such group, association or organization may be served.

No such group, association or organization shall engage in any unfair or unreasonable practice with respect to such activities.

History: En. Sec. 20, Ch. 362, L. 1969.

40-3654. Maintenance of records — necessity — contents — compliance with section—place of maintenance. Every insurer, rating organization or advisory organization, and every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members, and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group or association, and, in the case of an insurer or rating organization, every rate, rating plan and rating system made or used by it, complies with the provisions of this chapter applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the commissioner at any time upon reasonable notice.

History: En. Sec. 21, Ch. 362, L. 1969.

40-3655. Records and examination. The commissioner shall, at least once every five (5) years, and may as often as may be reasonable and necessary, make or cause to be made, an examination of each licensed rating organization, and he may, as often as may be reasonable and necessary, make or cause to be made an examination of any advisory

organization or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance.

In lieu of any such examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state.

In examining any organization, group or association pursuant to this section, the commissioner shall ascertain whether such organization, group or association, and, in the case of a rating organization, any rate or rating system made or used by it, complies with the requirements and standards of this chapter applicable to it.

History: En. Sec. 22, Ch. 362, L. 1969.

40-3656. Examination of admitted insurers. The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether such insurer and every rate and rating system used by it for every class of insurance complies with the requirements and standards of this chapter applicable thereto. Such examination shall not be a part of a periodic general examination participated in by representatives of more than one state.

History: En. Sec. 23, Ch. 362, L. 1969.

40-3657. Examination of officers, managers, agents and employees. The officers, managers, agents and employees of any such organization, group, association or insurer may be examined at any time under oath, and shall exhibit all books, records, accounts, documents or agreements governing its method of operation, together with all data, statistics and information of every kind and character collected or considered by such organization, group, association or insurer in the conduct of the operations to which such examination relates.

History: En. Sec. 24, Ch. 362, L. 1969.

40-3658. Payment of cost of examination. The reasonable cost of any examination authorized by this article shall be paid by the organization, group, association or insurer to be examined.

History: En. Sec. 25, Ch. 362, L. 1969.

40-3659. Review of rates. Any person aggrieved by any rate charged, rating plan, rating system or underwriting rule followed or adopted by an insurer or rating organization, may request the insurer or rating organization to review the manner in which the rate, plan, system or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be written. If the request is not granted within thirty (30) days after it is made, the requester may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested, or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing with the

commissioner, specifying the grounds relied upon. If the commissioner has information concerning a similar complaint, he may deny the hearing. If he believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. Otherwise, and if he finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in section 27 [40-3660].

History: En. Sec. 26, Ch. 362, L. 1969.

40-3660. Noncompliance of rates. If, after examination of an insurer, rating organization, advisory organization, or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, or upon the basis of other information, or upon sufficient complaint as provided in section 26 [40-3659], the commissioner has good cause to believe that such insurer, organization, group or association, or any rate, rating plan or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of this chapter applicable to it, he shall, unless he has good cause to believe such noncompliance is willful, give notice, in writing, to such insurer, organization, group or association stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten (10) days thereafter, in which such noncompliance may be corrected. Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under section 28 [40-3661].

History: En. Sec. 27, Ch. 362, L. 1969.

40-3661. Hearings. If the commissioner has good cause to believe such noncompliance to be willful, or if within the period prescribed by the commissioner in the notice required by section 27 [40-3660], the insurer, organization, group or association does not make such changes as may be necessary to correct the noncompliance specified by the commissioner, or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may hold a public hearing in connection therewith, provided that within a reasonable period of time, which shall be not less than ten (10) days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to such insurer, organization, group or association. If no notice has been given as provided in section 27 [40-3660], such notice shall state therein in what manner and to what extent noncompliance is alleged to exist. The hearing shall not include any additional subjects not specified in the notices required by section 27 [40-3660] or this section.

History: En. Sec. 28, Ch. 362, L. 1969.

40-3662. Issuance of order—suspension or revocation of certificate of authority or license. If, after a hearing pursuant to section 28 [40-3661], the commissioner finds:

(a) That any rate, rating plan or rating system violates the provisions of this chapter applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing, specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited.

(b) That an insurer, rating organization, advisory organization, or a group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, is in violation of the provisions of this chapter applicable to it, other than the provisions dealing with rates, rating plans or rating systems, he may issue an order to such insurer, organization, group or association which has been the subject of the hearing, specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter.

(c) That the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization which has been the subject of hearing was willful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing.

(d) That any rating organization has willfully engaged in any fraudulent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization, in addition to any other penalty provided in this chapter.

History: En. Sec. 29, Ch. 362, L. 1969.

40-3663. Failure to comply with order—suspension or revocation of license or certificate. In addition to other penalties provided in this code, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in such order which fails to comply within the time limited by such order or any extension thereof which the commissioner may grant, with an order of the commissioner lawfully made by him pursuant to section 29 [40-3662] and effective pursuant to section 31 [40-3664].

History: En. Sec. 30, Ch. 362, L. 1969.

40-3664. Appeals from the commissioner. Any person, insurer or rating organization aggrieved by any order or decision made by the commissioner under this chapter may appeal therefrom to the district court of the county where the aggrieved party may reside, or has his principal place of business in this state, or to the district court of Lewis and Clark county, Montana. The appeal shall be taken within thirty (30) days from the making and filing of the order or decision by filing in the office of the commissioner a notice of the appeal in writing. The commissioner shall, within twenty (20) days after filing of the notice, make and return to the district court a full and complete certified transcript of

the finding and order appealed from and of all parts relative thereto on file in his office, including the notice of appeal. Upon filing of the certified transcript, all matters involved therein shall be brought on for trial upon the merits at the next term of the court after the filing of the transcript, unless otherwise ordered by the court. Upon the trial, the findings of fact on which the order is based shall be prima facie evidence of the matters therein stated. During the pendency of the proceedings upon review, the order of the commissioner shall be suspended, but in the event of a final determination against any insurer, any overcharge by the insurer during review shall be refunded to the persons entitled thereto.

History: En. Sec. 31, Ch. 362, L. 1969.

40-3665. Information not to be willfully withheld. (a) No person, insurer or organization shall willfully withhold information from, or knowingly give false or misleading information to, the commissioner or to any rating organization, advisory organization, insurer or group, association or other organization of insurers, which will affect the rates, rating systems or premiums for the classes of insurance to which the provisions of this chapter are applicable.

(b) Any person, insurer, organization, group or association who fails to comply with a final order of the commissioner under this chapter shall be liable to the state in an amount not exceeding fifty dollars (\$50), but if such failure be willful, he or it shall be liable to the state in an amount not exceeding five thousand dollars (\$5,000) for such failure. The commissioner shall collect the amount so payable and may bring an action in the name of the people of the state of Montana to enforce collection. Such penalties may be in addition to any other penalties provided by law.

(c) A willful violation of the provisions of this chapter by any person is a misdemeanor.

History: En. Sec. 32, Ch. 362, L. 1969.

40-3666. Payment of dividends, etc., not prohibited or regulated—plan for payment not rating system. Nothing in this chapter shall be construed to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers shall not be deemed a rating plan or system.

History: En. Sec. 33, Ch. 362, L. 1969.

40-3667. Acts, etc., done by authority of chapter not violation of other laws. No act done, action taken or agreement made pursuant to the authority conferred by this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this

state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 34, Ch. 362, L. 1969.

40-3668. Administration or enforcement of chapter—supplementation or modification. The administration and enforcement of this chapter shall be governed solely by the provisions of this chapter. Except as provided in this chapter, no other law relating to insurance and no other provisions in this code heretofore or hereafter enacted shall apply to or be construed as supplementing or modifying the provisions of this chapter unless such other law or other provision expressly so provides and specifically refers to the sections of this chapter which it intends to supplement or modify.

History: En. Sec. 35, Ch. 362, L. 1969.

40-3669. Recording and reporting of loss and expense experience.

(a) The commissioner shall promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, and which shall thereafter be used by each insurer in the recording and reporting of its loss and country-wide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rates comply with the applicable standards of this act. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of country-wide expense experience.

(b) In promulgating such rules and plans the commissioner shall give due consideration to the rating systems in use in this state and, in order that such rules and plans may be as uniform as is practicable among the several states to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it.

(c) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

History: En. Sec. 36, Ch. 362, L. 1969.

Repealing Clause

Section 37 of Ch. 362, Laws 1969 read "Sections 40-3601 through 40-3633, R. C. M. 1947, are hereby repealed."

CHAPTER 37—THE INSURANCE CONTRACT

40-3713. Representations in applications.

Waiver of Misrepresentation

Motorist injured by negligence of insured was entitled to recover under in-

sured's policy, even though insurance company was entitled to rescind policy for violation of this statute since insurance

policy was effective until rescinded and since subsequent to discovering insured's fraud, insurance company acted affirmatively in accepting premium payments and paying other claims arising out of same

accident all of which constituted implied waiver of right to rescind. *McLane v. Farmers Ins. Exchange*, 150 M 116, 432 P 2d 98.

40-3725. Construction of policies.

Construction against Insurer

A policy of insurance must be liberally construed in favor of the insured, and strictly construed against the insurer. *Insurance Co. of North America v. Butte Aero Sales & Service*, 243 F Supp 276.

Endorsement on insurance policy limiting aircraft insurance to named person and anyone else having certain number of hours of flying time and proper certification was construed against the insurer to mean that the named insured was at all times covered while others who flew the craft had to be certified also in order to be covered by the policy. *Insurance Co. of North America v. Butte Aero Sales & Service*, 243 F Supp 276.

Crop Insurance

Crop-hail insurance policy, which re-

quired information pertaining to acreage of crop prior to issuance, should be strictly construed against the insurer in determining that value of crop damage was based on percentage of area destroyed rather than on estimated crop value, since policy form was provided by the company. *Billmayer v. Farmers Union Property & Casualty Co.*, 146 M 38, 404 P 2d 322.

Where the basis for recovery under a crop-hail insurance policy was on the acreage insured, stipulation that amount payable should not exceed the "actual loss or damage," read in light of the entire policy, pertained to loss or damage representing the percentage of injury to the crop, and not the value of the crop. *Billmayer v. Farmers Union Property & Casualty Co.*, 146 M 38, 404 P 2d 322.

CHAPTER 38—LIFE INSURANCE AND ANNUITIES

Section 40-3802. "Industrial life insurance" defined.

40-3831. Standard nonforfeiture law—life insurance.

40-3802. "Industrial life insurance" defined. For the purposes of this code "industrial life insurance" is that form of life insurance written under policies of face amount of two thousand dollars (\$2,000) or less bearing the words "industrial policy" imprinted on the face thereof as part of the descriptive matter, and under which premiums are payable monthly or more often.

History: En. Sec. 296, Ch. 286, L. 1959; amd. Sec. 1, Ch. 30, L. 1969.

Amendments

The 1969 amendment raised the limit for policies from \$1,000 to \$2,000.

40-3831. Standard nonforfeiture law—life insurance. (1) to (3). * * * [Same as parent volume.]

(4) **Cash surrender value—life:** Any cash surrender value available under the policy in the event of default in the premium payment due on any policy anniversary, whether or not required by subsection (2) of this section, shall be an amount not less than the excess, if any, of the present value on such anniversary of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions if there had been no default, over the sum of:

(a) The then present value of the adjusted premiums as defined in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section, corresponding to premiums which would have fallen due on and after such anniversary, and

(b). * * * [Same as parent volume.]

(5) to (7). * * * [Same as parent volume.]

(7-a) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (i) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased during the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted premiums for such term insurance, the foregoing items (i) and (ii) being calculated separately and as specified in subsections (6) and (7) except that, for the purposes of (b), (c), and (d) of subsection (6), the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (ii) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (i).

(8) Except as otherwise provided in subsections (8-a) and (8-b), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the commissioner's 1941 standard ordinary mortality table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated, at the option of the insurer with approval of the commissioner, according to an age younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 standard industrial mortality table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent ($3\frac{1}{2}\%$) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty per cent (130%) of the rates of mortality according to such applicable table, provided further that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(8-a). * * * [Same as parent volume.]

(8-b) In the case of industrial policies issued on or after the operative date of this subsection (8-b) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of commissioners 1961 standard industrial mortality table and the rate of interest, not exceeding three and one-half per cent ($3\frac{1}{2}\%$) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1961 industrial extended term insurance table. Provided, further,

that for insurance issued on a substandard basis the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the commissioner.

After the effective date of this subsection (8-b), any insurer may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January first, nineteen hundred and sixty-eight. After the filing of such notice, then upon such specified date (which shall be the operative date of this subsection for such insurer), this subsection shall become operative with respect to the industrial policies thereafter issued by such insurer. If an insurer makes no such election, the operative date of this subsection for such insurer shall be January first, nineteen hundred and sixty-eight.

(9) Calculation of values—life: Any cash surrender value and any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (4), (5), (6), (7), (7-a), (8), (8-a) and (8-b) of this section may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (4) of this section, additional benefits payable:

(a) In the event of death or dismemberment by accident or accidental means,

(b) In the event of total and permanent disability,

(c) As reversionary annuity or deferred reversionary annuity benefits,

(d) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply,

(e) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and

(f) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits,

Shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(10) Exceptions. This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen (15) years or less expiring before age 66 for which uniform premiums are payable during the entire term of the policy, nor to any term

policy of decreasing amount on which each adjusted premium, calculated as specified in subsections (6), (7), (7-a), (8), (8-a) and (8-b) of this section is less than the adjusted premiums so calculated on a policy issued at the same age and for the same initial amount of insurance for a term defined as follows: For ages at issue fifty (50) and under, the term shall be fifteen (15) years; thereafter, the term shall decrease one (1) year for each year of age beyond fifty (50).

(11). * * * [Same as parent volume.]

History: En. Sec. 325, Ch. 286, L. 1959; amd. Sec. 1, Ch. 65, L. 1961; amd. Sec. 1, Ch. 42, L. 1965.

and (10); and made minor changes in punctuation in subsections (7-a) and (8).

Effective Date

Section 2 of Ch. 42, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 22, 1965.

Amendment

The 1965 amendment inserted subsection (8-b); inserted references to subsection (8-b) in subsections (4) (a), (8), (9),

CHAPTER 39—GROUP LIFE INSURANCE

Section 40-3905.1. State employee groups.
40-3906. Debtor groups.

40-3905.1. State employee groups. All departments, bureaus, boards, commissions and agencies of the state of Montana are hereby authorized upon approval by a two-thirds ($\frac{2}{3}$) vote of the officers and employees of such departments, bureaus, boards, commissions and agencies to enter into group hospitalization, medical, health, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents. The premiums required from time to time to maintain such insurance in force shall be paid by the insured officers and employees, and the auditor shall deduct said premiums from the salary or wages of each officer or employee who elects to become insured, on the officer or employee's written order, and issue his warrant therefor to the insurer. For the purpose of this act, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health, or the services of hospitals, clinics or sanitariums, or both professional and hospital services, shall be construed as group insurance, and the dues payable under such plans shall be construed as premiums therefor.

History: En. Sec. 1, Ch. 248, L. 1963.

Effective Date

Section 2 of Ch. 248, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

Title of Act

An act relating to group life and health insurance for state officers and employees and providing for payroll deductions.

40-3906. Debtor groups. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure the debtors of the creditor, subject to the following requirements:

(1) to (3). * * * [Same as parent volume.]

(4) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him to the creditor. Where the indebtedness is repayable in one sum to the creditor, the insurance on the life of any debtor shall in no instance be in effect for a period in excess of five years, except that such insurance may be continued for an additional period not exceeding six months in the case of default, extension or recasting of the loan.

(5). * * * [Same as parent volume.]

History: En. Sec. 333, Ch. 286, L. 1959; amd. Sec. 1, Ch. 132, L. 1965.

years" for "eighteen months" in the second sentence of subsection (4).

Amendment

The 1965 amendment deleted "or ten thousand dollars (\$10,000), whichever is less" at the end of the first sentence of subsection (4); and substituted "five

Repealing Clause

Section 2 of Ch. 132, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 40—DISABILITY INSURANCE POLICIES

40-4011. Time of payment of claims.

Criminal Penalty

Separate penalty provided in section 40-2617 is applicable to violation of this section requiring prompt payment of claims. State ex rel. Larson v. District Court, Eighth Judicial District, 149 M 131, 423 P 2d 598.

Exemplary Damages

Insured was entitled to actual damages for default on policy requiring insurer to pay car installments upon insured's disability as well as to exemplary damages for default as being in violation of statute requiring prompt payment of claim. State ex rel. Larson v. District Court, Eighth Judicial District, 149 M 131, 423 P 2d 598.

40-4034. Violations.

Prompt Payment of Claims

Separate penalty provided in section 40-2617 is applicable to violation of section 40-4011 requiring prompt payment of

claims. State ex rel. Larson v. District Court, Eighth Judicial District, 149 M 131, 423 P 2d 598.

CHAPTER 41—GROUP AND BLANKET DISABILITY INSURANCE

Section 40-4108. Policies to provide for freedom of choice of practitioners.

40-4109. Scope of professional practice not enlarged—hospitals.

40-4108. Policies to provide for freedom of choice of practitioners. All policies of disability insurance, including individual, group and blanket policies, and all policies insuring the payment of compensation under the Workmen's Compensation Act shall provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiropractor, optometrist or chiropodist for treatment of any illness or injury within the scope and limitations of his practice. Whenever such policies insure against the expense of drugs, the insured shall have full freedom of choice in the selection of any duly licensed and registered pharmacist.

History: En. Sec. 1, Ch. 172, L. 1967.

Title of Act

An act requiring disability insurance

and workmen's compensation policies to provide the insured shall have full freedom of choice in the selection of any duly licensed physician, osteopath, chiroprac-

tor, optometrist or chiropodist for treatment of illness or injury; providing a like freedom of choice in the selection of

pharmacists; providing an effective date; and containing a repealing clause.

40-4109. Scope of professional practice not enlarged—hospitals. Nothing in this act shall be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in section 1 [40-4108]; nor shall this act be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals.

History: En. Sec. 2, Ch. 172, L. 1967.

Effective Date

Repealing Clause

Section 4 of Ch. 172, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 172, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 27, 1967.

CHAPTER 42—CREDIT LIFE AND DISABILITY INSURANCE

Section 40-4203. Scope of chapter.

40-4211. Premiums and refunds.

40-4203. Scope of chapter. All life insurance and all disability insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this chapter except such insurance sold in connection with a loan or other credit transaction of more than ten (10) years duration.

History: En. Sec. 394, Ch. 286, L. 1959; amd. Sec. 1, Ch. 31, L. 1969.

Amendments

The 1969 amendment increased the time period of exempt transactions from five years to ten years.

40-4211. Premiums and refunds. (1) to (3). * * * [Same as parent volume.]

(4) The amount charged to a debtor for any credit life or credit disability insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

History: En. Sec. 402, Ch. 286, L. 1959; amd. Sec. 1, Ch. 113, L. 1967.

Amendments

The 1967 amendment added subsection (4) to this section.

CHAPTER 43—PROPERTY INSURANCE CONTRACTS

40-4301. Measure of the indemnity.

References

Billmayer v. Farmers Union Property & Casualty Co., 146 M 38, 404 P 2d 322.

40-4302. Valued policy law.

References

Billmayer v. Farmers Union Property & Casualty Co., 146 M 38, 404 P 2d 322.

CHAPTER 44—CASUALTY INSURANCE CONTRACTS

- Section 40-4402. Sovereign immunity defense prohibited when liability insured—reduction of award to policy limits.
 40-4403. Motor vehicle liability policies to include uninsured motorist coverage—rejection of coverage by insured.
 40-4404. Reimbursement for total loss of motor vehicle based on actual replacement value.

40-4402. Sovereign immunity defense prohibited when liability insured—reduction of award to policy limits. Whenever an insurer accepts any premium, money or other consideration from a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity for casualty or liability insurance, neither such insured nor insurer shall raise the defense of sovereign or governmental immunity in any damage action brought against such insured or insurer, and any agreement in the insurance contract permitting the defense of sovereign or governmental immunity is hereby declared void. No attempt shall be made in the trial of an action brought against such political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity, to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered in favor of plaintiff. If the court shall determine that the defendant could have successfully raised the defense of sovereign or governmental immunity, and if the verdict exceeds the limits of the applicable insurance, the court shall reduce the amount of such judgment or award to a sum equal to the applicable limit stated in the policy.

History: En. Sec. 1, Ch. 240, L. 1963.

sovereign immunity defense could have been successfully raised; repealing all acts and parts of acts in conflict herewith.

Title of Act

An act prohibiting the defense of sovereign immunity where public bodies are insured; prohibiting the suggestion of insurance coverage in actions against public bodies, and providing for the reduction of awards to policy limits where

Repealing Clause

Section 2 of Ch. 240, Laws 1963 repealed all acts and parts of acts in conflict therewith.

40-4403. Motor vehicle liability policies to include uninsured motorist coverage—rejection of coverage by insured. No automobile liability or motor vehicle liability policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle, shall be delivered or issued for delivery in this state, with respect to any motor vehicle registered or principally garaged in this state, unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in section 53-422, under provisions filed with and approved by the insurance commissioner, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, that the named insured shall have the right to reject such coverage; and, provided further, that unless the named insured requests such coverage in writing, such

coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with the policy previously issued to him by the same insurer.

History: En. Sec. 1, Ch. 31, L. 1967.

the option of the insured; providing for an effective date.

Title of Act

An act relating to automobile liability insurance policies; requiring such policies to contain uninsured motorist provision; permitting rejection of such coverage at

Effective Date

Section 2 of Ch. 31, Laws 1967 read "This act is effective January 1, 1968."

40-4404. Reimbursement for total loss of motor vehicle based on actual replacement value. Each automobile insurance policy issued to residents of this state which provides that reimbursement for total loss of a motor vehicle shall be based on a "book" value rather than on the actual replacement value is void as to such provision and reimbursement shall be made for actual replacement value.

History: En. Sec. 1, Ch. 182, L. 1969.

insurance must provide that reimbursement for a total loss of the vehicle be based on the actual replacement value of the vehicle and not on a book value.

Title of Act

An act to provide that motor vehicle

CHAPTER 47—ORGANIZATION AND CORPORATE PROCEDURES
OF STOCK AND MUTUAL INSURERS

- Section 40-4751. Equity securities of domestic stock insurance company—statement of ownership.
- 40-4752. Equity securities of domestic stock insurance company—inside trading—profit inures to company—limitation of action to recover.
- 40-4753. Short sales of equity securities prohibited—time for delivery after sale.
- 40-4754. Exemptions—securities held in an investment account—primary or secondary market.
- 40-4755. Exemptions—arbitrage transactions.
- 40-4756. "Equity security" defined.
- 40-4757. Exemptions—registered securities—holding by less than one hundred persons.
- 40-4758. Rules and regulations of commissioner—classifications—effect.

40-4743. Mutualization of stock insurers.

Compiler's Notes

Section 15-1905, referred to in subd. (e) of subsection (2) of this section in the

parent volume, was repealed by Sec. 143, Ch. 300, Laws 1967.

40-4751. Equity securities of domestic stock insurance company—statement of ownership. Every person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file with the commissioner of insurance within ten (10) days after he becomes such beneficial owner, director or officer, a statement in such form as the commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter. If there has been a change in

such ownership during such month, such person shall file with the commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

History: En. Sec. 1, Ch. 159, L. 1965. domestic stock insurance company equity securities.

Title of Act

An act relating to insider trading of

40-4752. Equity securities of domestic stock insurance company—inside trading—profit inures to company—limitation of action to recover. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to such company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty (60) days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two (2) years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the commissioner by rules and regulations may exempt as not comprehended within the purpose of this section.

History: En. Sec. 2, Ch. 159, L. 1965.

40-4753. Short sales of equity securities prohibited—time for delivery after sale. It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such company if the person selling the security or his principal (i) does not own the security sold, or (ii) if owning the security, does not deliver it against such sale within twenty (20) days thereafter, or does not within five (5) days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

History: En. Sec. 3, Ch. 159, L. 1965.

40-4754. Exemptions—securities held in an investment account—primary or secondary market. The provisions of section 2 [40-4752] of this

act shall not apply to any purchase and sale, or sale and purchase, and the provisions of section 3 [40-4753] of this act shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a broker-dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security. The commissioner may, by such rules and regulations as he deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

History: En. Sec. 4, Ch. 159, L. 1965.

40-4755. Exemptions—arbitrage transactions. The provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the commissioner may adopt in order to carry out the purposes of this act.

History: En. Sec. 5, Ch. 159, L. 1965.

40-4756. "Equity security" defined. The term "equity security" when used in this act means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as he may prescribe in the public interest or for the protection of investors, to treat as an equity security.

History: En. Sec. 6, Ch. 159, L. 1965.

40-4757. Exemptions—registered securities—holding by less than one hundred persons. The provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act shall not apply to equity securities of a domestic stock insurance company if (a) such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934, as amended, or if (b) such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred (100) or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act except for the provisions of this subsection (b).

History: En. Sec. 7, Ch. 159, L. 1965.

40-4758. Rules and regulations of commissioner—classifications—effect. The commissioner may make such rules and regulations as may be necessary for the execution of the functions vested in him by sections 1 through 7 [40-4751 to 40-4757] of this act, and may for such purpose

classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provision of sections 1, 2, and 3 [40-4751, 40-4752 and 40-4753] of this act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the commissioner notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

History: En. Sec. 8, Ch. 159, L. 1965.

CHAPTER 48—FARM MUTUAL INSURERS

Section 40-4804. Limit of risk.

40-4801. Scope of chapter—provisions exclusive.

Compiler's Notes

Sections 40-1501 to 40-1517 and 40-1601 to 40-1625, referred to in subdivisions (1)

(a) and (1)(b) of this section in the parent volume, were repealed by Sec. 673, Ch. 286, Laws 1959.

40-4804. Limit of risk. (1) The maximum amount of insurance which an insurer shall retain on a single risk, after deduction of applicable reinsurance, shall not exceed ten per cent (10%) of the admitted assets of the insurer or fifteen thousand dollars (\$15,000), whichever is the larger amount.

(2). * * * [Same as parent volume.]

History: En. Sec. 471, Ch. 286, L. 1959; amd. Sec. 1, Ch. 259, L. 1967.

Amendments

The 1967 amendment substituted "fifteen thousand dollars (\$15,000)" for "five thousand dollars" in subsection (1).

CHAPTER 51—REHABILITATION AND LIQUIDATION

40-5101. Definitions.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have

adopted the Uniform Insurers Liquidation Act: Alaska, Arkansas, Florida, and West Virginia.

CHAPTER 54—EXTENDED HEALTH INSURANCE FOR OLDER PERSONS

Section 40-5401. Purpose of act.

40-5402. Definition of terms.

40-5403. Joint underwriting authorized—reduction for other coverage—group policies—availability of coverage.

40-5404. Agents authorized to write coverage.

40-5405. Corporate powers of association—examination of books.

40-5406. Policy forms to be approved—procedure—duplication of federal benefits—reports and information furnished by association.

40-5407. Filing with commissioner by association—deceptive practices prohibited.

40-5408. Exemption of association from other laws.

40-5401. Purpose of act. It is the purpose of this act to provide a means of more adequately meeting the needs of persons who are 65 years of age or older and their spouses for insurance coverage against financial loss from accident or disease through the combined resources and ex-

perience of a number of insurers; to make possible the fullest extension of such coverage by encouraging insurers to combine their resources and experience and to exercise their collective efforts in the development and offering of policies of such insurance to all applicants; and to regulate the joint activities herein authorized in accordance with the intent of Congress as expressed in the act of Congress of March 9, 1945 (Public Law 15, 79th Congress), as amended.

History: En. Sec. 1, Ch. 61, L. 1965.

Title of Act

An act relating to group accident and sickness insurance for persons 65 years of

age or older, and their spouses; providing regulation of such insurance by the commissioner of insurance; and providing an effective date.

40-5402. Definition of terms. Wherever used in this act, the following terms shall have the meanings hereinafter set forth or indicated, unless the context otherwise requires:

(a) "Association" means a voluntary unincorporated association formed for the purpose of enabling co-operative action to provide disability insurance in accordance with this act in this or any other state having legislation enabling the issuance of insurance of the type provided in this act.

(b) "Insurer" means any insurance company which is authorized to transact disability insurance in this state.

(c) "Extended health insurance" means hospital, surgical and medical expense insurance provided by a policy issued as provided by this act.

History: En. Sec. 2, Ch. 61, L. 1965.

40-5403. Joint underwriting authorized—reduction for other coverage—group policies—availability of coverage. Notwithstanding any other provision of this code or any other law which may be inconsistent herewith, any insurer may join with one or more other insurers, to plan, develop, underwrite, and offer and provide to any person who is 65 years of age or older and to the spouse of such person, extended health insurance against financial loss from accident or disease, or both. Such insurance may be offered, issued and administered jointly by two or more insurers by a group policy issued to a policyholder through an association formed for the purpose of offering, selling, issuing and administering such insurance. The policyholder may be an association, a trustee, or any other person. Any such policy may provide, among other things, that the benefits payable thereunder are subject to reduction if the individual insured has any other coverage providing hospital, surgical or medical benefits whether on an indemnity basis or a provision of service basis resulting in such insured being eligible for more than 100 per cent of covered expenses which he is required to pay, and any insurer issuing individual policies providing extended hospital, surgical or medical benefits to persons 65 years of age and older and their spouses may also use such a policy provision. A master group policy issued to an association or to a trustee or any person appointed by an association for the purpose of providing the insurance described in this act shall be another form of group disability insurance.

Any form of policy approved by the commissioner for an association shall be offered throughout Montana to all persons 65 and older and their spouses, and the coverage of any person insured under such a form of policy shall not be cancellable except for nonpayment of premiums unless the coverage of all persons insured under such form of policy is also canceled.

History: En. Sec. 3, Ch. 61, L. 1965.

40-5404. Agents authorized to write coverage. Notwithstanding the provisions of section 40-3316, any person licensed to transact disability insurance as an insurance agent, may transact extended health insurance and may be paid a commission thereon.

History: En. Sec. 4, Ch. 61, L. 1965.

40-5405. Corporate powers of association—examination of books. Any association formed for the purposes of this act, may hold title to property, may enter into contracts, and may limit the liability of its members to their respective pro rata shares of the liability of such association. Any such association may sue and be sued in its associate name and for such purpose only shall be treated as a domestic corporation. Service of process against such association, made upon a managing agent, any member thereof or any agent authorized by appointment to receive service of process, shall have the same force and effect as if such service had been made upon all members of the association. Such association's books and records shall also be subject to examination under the provisions of sections 40-2713 to 40-2719, inclusive, either separately or concurrently with examination of any of its member insurers.

History: En. Sec. 5, Ch. 61, L. 1965.

40-5406. Policy forms to be approved—procedure—duplication of federal benefits—reports and information furnished by association. The forms of the policies, applications, certificates or other evidence of insurance coverage and applicable premium rates relating thereto shall be filed with the commissioner. No such policy, contract, certificate or other evidence of insurance, application or other form shall be sold, issued or used and no endorsement shall be attached to or printed or stamped thereon unless the form thereof shall have been approved by the commissioner or 30 days shall have expired after such filing without written notice from the commissioner of disapproval thereof. The commissioner shall disapprove the forms for such insurance if he finds that they are unjust, unfair, inequitable, misleading or deceptive or that the rates are by reasonable assumptions excessive in relation to the benefits provided. In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this state, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this state, and to all other relevant factors within and outside this state including any differing

operating methods of the insurers joining in the issue of the policy. In exercising the powers conferred upon him by this act, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in disability policies or forms.

The commissioner may, after hearing upon written notice, withdraw an approval previously given, upon such grounds as in his opinion would authorize disapproval upon original submission thereof. Any such withdrawal of approval after hearing shall be by notice in writing specifying the ground thereof and shall be effective at the expiration of such period, not less than 90 days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe.

If and when a program of hospital, surgical and medical benefits is enacted by the federal government or the state of Montana, the extended health insurance benefits provided by policies issued under this act shall be adjusted to avoid any duplication of benefits offered by the federal or state programs and the premium rates applicable thereto shall be adjusted to conform with the adjusted benefits.

The association shall submit an annual report to the insurance commissioner which shall become public information and shall provide information as to the number of persons insured, the names of the insurers participating in the association with respect to insurance offered under this act and the calendar year experience applicable to such insurance offered under this act, including premiums earned, claims paid during the calendar year, the amount of claims reserve established, administrative expenses, commissions, promotional expenses, taxes, contingency reserve, other expenses, and profit and loss for the year. The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by him for inclusion in the report.

History: En. Sec. 6, Ch. 61, L. 1965.

40-5407. Filing with commissioner by association—deceptive practices prohibited. The articles of association of any association formed in accordance with this act, all amendments and supplements thereto, a designation in writing of a resident of this state as agent for the service of process, and a list of insurers who are members of the association and all supplements thereto shall be filed with the commissioner.

The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered, or issued, pursuant to this act shall not be such as to mislead or deceive the public.

History: En. Sec. 7, Ch. 61, L. 1965.

40-5408. Exemption of association from other laws. No act done, action taken or agreement made pursuant to the authority conferred by this act shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance.

History: En. Sec. 8, Ch. 61, L. 1965.

Effective Date

Section 9 of Ch. 61, Laws 1965 pro-

vided the act should be in effect from and after its passage and approval. Approved February 25, 1965.

CHAPTER 55—INSURANCE HOLDING ACT

Section 40-5501. Short title.

40-5502. General definitions.

40-5503. Restrictions on transfers of stock.

40-5504. Exemptions from prohibitions on stock transfers.

40-5505. Examination of foreign and domestic holding companies—frequency of examination—submission of annual reports.

40-5506. Acquisition and transfer of stock—submission of petition—hearings—denial of petition.

40-5507. Violations of act—penalty.

40-5508. Filing of false information—penalty.

40-5501. Short title. This act may be cited as the "Montana Insurance Holding Act."

History: En. Sec. 1, Ch. 269, L. 1967.

Title of Act

An act to provide for control and regulation of the affairs of domestic and foreign insurance holding companies; prescribe rules and regulations governing acquisition and disposal of stock of insurance holding companies; prescribe rules and regulations regarding acquisition and disposal of stock of insurance companies

by insurance holding companies; exempting certain acquisitions and disposals of stock from the provisions of the act; subjecting domestic insurers coming within the purview of the act to examination by the insurance department; providing for application to be made to the insurance commissioner to approve certain transactions; providing for judicial review of orders; defining terms; and providing penalties.

40-5502. General definitions. Unless context requires otherwise, in this act:

(1) "Commissioner" means commissioner of insurance of the state of Montana.

(2) "Department" means the department of insurance of the state of Montana.

(3) "Company" means all corporations, joint stock companies, trusts, associations, partnerships, or individuals engaged in the business of insurance as principals.

(4) "Insurance Holding Company" means any company:

(a) which directly or indirectly owns, controls or holds with power to vote fifteen per cent (15%) or more of the voting stock of one or more insurance companies; or

(b) which controls the election of the directors of one or more insurance companies; or

(c) for the benefit of whose stockholders or members, fifteen per cent (15%) or more of the voting stock of one or more insurance companies is held by one or more trustees; and for the purposes of this section, any successor to any company from the date as of which such predecessor company became an insurance holding company.

(5) "Affiliate" means:

(a) any company, fifteen per cent (15%) or more of whose voting stock is owned or controlled by an insurance holding company; or

(b) any company, the election of whose directors is controlled in any manner by an insurance holding company; or

(c) any company, fifteen per cent (15%) or more of whose vote or voting stock is held by trustees for the benefit of the stockholders or members of an insurance holding company.

(6) "Successor" means any company which acquired directly or indirectly from an insurance holding company stock of any insurance company when and if the relationship between such company and insurance holding company is such that the transaction effects no substantial change in the control of the insurance company or beneficial ownership of the stock thereof. The commissioner may, by regulation, further define the word "successor" to the extent necessary to prevent evasion of the purposes of this section.

(7) "Domestic" insurer means one formed under the laws of this state.

(8) "Foreign" insurer means one formed under the laws of any jurisdiction other than this state.

History: En. Sec. 2, Ch. 269, L. 1967.

40-5503. Restrictions on transfers of stock. Except with prior written approval of the commissioner:

(1) No domestic insurance company shall directly or indirectly transfer fifteen per cent (15%) of its voting stock to a foreign or domestic insurance holding company.

(2) No domestic insurance holding company shall transfer, directly or indirectly, ownership or control of voting stock in any other company to a foreign insurance holding company if, after such acquisition, such foreign insurance holding company will own or control, directly or indirectly, fifteen per cent (15%) or more of the voting stock of the company whose shares it acquires.

(3) No domestic insurance holding company shall, directly or indirectly, transfer more than fifteen per cent (15%) of its authorized and outstanding voting stock to any other corporation, association, partnership or individual.

History: En. Sec. 3, Ch. 269, L. 1967.

40-5504. Exemptions from prohibitions on stock transfers. The prohibitions of section 3 [40-5503] shall not apply to:

(1) Stock held in a fiduciary capacity except where such stock is held for the benefit of the shareholders of an insurance company or insurance holding company;

(2) Stock accepted in good faith as collateral security by a company other than an insurance holding company for advances made or stock acquired in good faith; provided, such stock shall be sold or other-

wise disposed of within two (2) years from the date of its acquisition unless its further holding is approved by the commissioner;

(3) Stock acquired as a consequence of a merger or consolidation of one insurance company with another, or the conversion of one insurance company into another, or the sale of assets of one insurance company to another where the stock acquired does not represent a larger percentage interest in the stock of the insurance company in which acquired than was held prior to such consolidation, merger, conversion, or sale by the insurance holding company in the insurance company consolidated, merged, or converted, or whose assets were the subject of the sale; or

(4) Any stock acquired in connection with the underwriting of the issue of such stock and which is held only for such period of time as will permit the sale thereof on a reasonable basis as regulated by the Securities Act of Montana.

History: En. Sec. 4, Ch. 269, L. 1967.

40-5505. Examination of foreign and domestic holding companies—frequency of examination—submission of annual reports. Every domestic insurance company, fifteen per cent (15%) of whose stock is held by a domestic or foreign insurance holding company and every domestic insurance holding company as defined by this act, shall be subject to examination by the insurance department of the state of Montana as often as the commissioner deems advisable, but not less frequently than once each year; and shall submit to the commissioner an annual report on forms prescribed by the commissioner.

History: En. Sec. 5, Ch. 269, L. 1967.

40-5506. Acquisition and transfer of stock—submission of petition—hearings—denial of petition. Any company or insurance holding company desiring to acquire or transfer stock as regulated by section 3 [40-5503] shall submit a petition, in writing, to the commissioner seeking approval of such acquisition or transfer, on such forms as the commissioner may from time to time prescribe and with such information as the commissioner by rule or regulation shall require. Upon receipt of a petition, the commissioner shall grant approval or grant a hearing on the request. If, after such hearing it is decided by the commissioner that such transfer or acquisition is not in the best interest of the stockholders, or policyholders, or that competition among insurance companies will be unnecessarily affected, he shall deny such petition. Upon denial of any petition, the courts of the state of Montana, first judicial district, in and for Lewis and Clark county, shall have jurisdiction to hear an appeal from said denial. A trial de novo shall be granted upon such an appeal.

History: En. Sec. 6, Ch. 269, L. 1967.

40-5507. Violations of act—penalty. Any company which fails to comply with the provisions of this act shall be fined by the commissioner in an amount not to exceed one thousand dollars (\$1,000.00), and the certificate of authority of any domestic insurance company which fails to comply with the provisions of this act shall be revoked by the commissioner, after a hearing held for that purpose.

History: En. Sec. 7, Ch. 269, L. 1967.

40-5508. Filing of false information—penalty. Any individual who knowingly causes, directly or indirectly, false information to be filed with the commissioner contained in any report required under the provisions of this act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment in the county jail for not more than six (6) months, or both.

History: En. Sec. 8, Ch. 269, L. 1967.

CHAPTER 56—WORKMEN'S COMPENSATION INSURANCE PREMIUM RATES

- Section 40-5601. Declaration of policy—purpose of act.
 40-5602. Applicability of act.
 40-5603. Certain reciprocal insurers excluded.
 40-5604. Rates, how made.
 40-5605. Excessive, inadequate or discriminatory rates prohibited.
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 40-5607. Classification manuals, rules and rating plans filed with commissioner—supporting information required—public inspection.
 40-5608. Suspension or modification of filing requirements.
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 40-5616. Membership in rating organization required.
 40-5617. Composition of rating organization.
 40-5618. Industrial accident board as member of committee on operation of rating organization—other members.

40-5601. Declaration of policy—purpose of act. (1) It is declared that the public welfare is served by the making of premium rates for workmen's compensation insurance coverage in concert, and that the review by the state of the rates so made is necessary and desirable in the public interest.

(2) It is the purpose of this act (a) to authorize such rate-making in concert, and the operating of rating organizations thereto;

(b) to establish the general bases and standards for the making of such rates;

(c) to provide for review by the state of such rate-making and the results thereof.

History: En. Sec. 1, Ch. 329, L. 1969.

Title of Act

An act to establish a policy for the making of premium rates for workmen's compensation insurance issued under plan Number 2 of the Workmen's Compensation Act, sections 92-1001 through 92-1012, R. C. M. 1947, and plan Number 3 of the Workmen's Compensation Act, sections 92-1101 through 92-1123, R. C. M. 1947, and to insurance or guaranty by surety insurers of the obligations of employers under the Workmen's Compensation Act; providing for rate-making factors, rate

standards and uniformity of rates, and providing for rate filing, exemptions from filing and effective date of filing; providing for disapproval of rate filing by the state auditor, ex officio commissioner of insurance; providing for disapproval of filing after consideration by the commissioner of insurance; providing for the scope of disapproval power by the commissioner of insurance; providing for adherence to filing; relating to excess rates, deviations from such rates and defining the power of the commissioner of insurance relative thereto; requiring rating organization membership and application of

the laws of Montana as to certain powers of the commissioner of insurance and to certain public employment; repealing all acts and parts of acts in conflict herewith; providing for filings by rating bureaus with the commissioner of insurance, including workmen's compensation insurance; requiring membership in a rating organization of all insurers writing workmen's compensation insurance and requiring membership of the Montana state industrial accident board, without election, on any committee of a rating organization of which it is a member; providing for application to the commissioner of insurance for percentage increase or decrease of premiums and providing procedure therefor; amending section 92-1101, R. C.

M. 1947, relating to payment of premiums by employers under plan Number 3 and referring to industrial accident board's membership in a rating organization; amending section 92-1104, R. C. M. 1947, relating to industrial accident board's power to determine premiums and referring to its membership in a rating organization; and amending section 92-1105, R. C. M. 1947, relating to the intent and purpose of plan Number 3, and referring to the industrial accident board's membership in a rating organization.

Cross-References

Workmen's Compensation Act, Sec. 92-101 et seq.

40-5602. Applicability of act. This act applies to the making of premium rates for workmen's compensation insurance issued under compensation plan Number 2 of the Workmen's Compensation Act, sections 92-1001 to and including 92-1012, and for workmen's compensation insurance issued under compensation plan Number 3 of the Workmen's Compensation Act, sections 92-1101 to and including 92-1123.

History: En. Sec. 2, Ch. 329, L. 1969.

Compiler's Notes

Sections 92-1106 and 92-1107, included

in the reference to sections 92-1101 to 92-1123, were repealed by Sec. 3, Ch. 233, Laws 1969.

40-5603. Certain reciprocal insurers excluded. This act shall not apply as to any reciprocal insurer transacting workmen's compensation insurance only and insuring solely the hazards or perils of its subscribers exclusively associated with a single industry.

History: En. Sec. 3, Ch. 329, L. 1969.

40-5604. Rates, how made. All rates shall be made in accordance with the following provisions:

(1) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both country-wide and those specially applicable to this state, and to all other relevant factors within and outside this state.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to

produce rates on individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

History: En. Sec. 4, Ch. 329, L. 1969.

40-5605. Excessive, inadequate or discriminatory rates prohibited. Rates shall not be excessive, inadequate or unfairly discriminatory.

History: En. Sec. 5, Ch. 329, L. 1969.

40-5606. Uniformity neither required nor prohibited. Except to the extent necessary to meet the provisions of section 4 [40-5604], uniformity among insurers in any matter within the scope of section 4 [40-5604] and section 5 [40-5605] is neither required nor prohibited.

History: En. Sec. 6, Ch. 329, L. 1969.

40-5607. Classification manuals, rules and rating plans filed with commissioner—supporting information required—public inspection. (1) There shall be filed with the insurance commissioner on behalf of every insurer writing workmen's compensation coverages in this state, every manual of classifications, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the filing is supported, and the insurance commissioner does not have sufficient information to determine whether such filing meets the requirements of this act, he shall require the insurer's rating organization or the insurer to furnish the information upon which it supports the filing and in such event, the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include:

- (a) the experience or judgment of the insurer;
 - (b) the insurer's or rating organization's interpretation of any statistical data relied upon;
 - (c) the experience of other insurers or rating organizations; or
 - (d) any other relevant factors.
- (2) A filing and any supporting information shall be open to public inspection after the filing becomes effective.

History: En. Sec. 7, Ch. 329, L. 1969.

40-5608. Suspension or modification of filing requirements. Under such rules and regulations as he shall adopt, the insurance commissioner may, by written order, suspend or modify the requirements of filing as to any kind of insurance, subdivision or combination thereof, or as to classes or risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The insurer

insurance commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in section 5 [40-5605].

History: En. Sec. 8, Ch. 329, L. 1969.

40-5609. Review of filings by commissioner—waiting period—special filings. (1) The insurance commissioner shall review filings as soon as reasonably possible after they have been made, in order to determine whether they meet the requirements of this act.

(2) Subject to the exception specified in subsection (3) below, each filing shall be on file for a waiting period of fifteen (15) days before it becomes effective, which period may be extended by the insurance commissioner for an additional period, not to exceed fifteen (15) days if he gives written notice within such waiting period to the rating organization which made the filing, that he needs such additional time for the consideration of the filing. Upon the written application by the insurer or rating organization, the insurance commissioner may authorize a filing which he has reviewed to become effective before expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this act unless disapproved by the insurance commissioner within the waiting period or any extension thereof.

(3) Any special filing with respect to a surety or guaranty bond required by law or by court or executive order or by order, rule or regulation of a public body, not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this act until such time as the insurance commissioner reviews the filing and so long thereafter as the filing remains in effect.

History: En. Sec. 9, Ch. 329, L. 1969.

40-5610. Notice of disapproval of filing. If, within the waiting period or any extension thereof as provided in section 9 [40-5609], the insurance commissioner finds that a filing does not meet the requirements of this act, he shall send to the rating organization which made the filing, written notice of disapproval of the filing, specifying therein in what respect he finds the filing fails to meet the requirements of this act and stating that the filing shall not become effective.

History: En. Sec. 10, Ch. 329, L. 1969.

40-5611. Notice and hearing on disapproval of filing subsequent to review period. If, at any time subsequent to the applicable review period provided for in section 9 [40-5609], the insurance commissioner finds that a filing does not meet the requirements of this act, he shall, after a hearing held upon not less than ten (10) days' written notice specifying the matters to be considered at such hearing, to every rating organization which made the filing, issue an order specifying in what respect he finds that the filing fails to meet the requirements of this act, and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. Copies of the order shall be sent to

every such rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

History: En. Sec. 11, Ch. 329, L. 1969.

40-5612. Filings meeting requirements of act not disapproved. No manual of classifications, rules, rating plan, or any modification of any of the foregoing which establishes standards for measuring variations in hazards or expense provisions, or both, and which has been filed pursuant to the requirements of section 7 [40-5607], shall be disapproved if the rates thereby produced meet the requirements of this act.

History: En. Sec. 12, Ch. 329, L. 1969.

40-5613. Enforcement of filed rates—lower rates prohibited. No insurer shall issue, renew or continue in force in this state any workmen's compensation insurance at premium rates which are less than the rates applicable under the filings in effect for the insurer, or in effect in accordance with section 8 [40-5608], except as is otherwise provided in this act as to the industrial accident board.

History: En. Sec. 13, Ch. 329, L. 1969.

40-5614. Excess rates. Upon the written application of the insured, stating his reasons therefor, filed with and approved by the insurance commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

History: En. Sec. 14, Ch. 329, L. 1969.

40-5615. Deviations from filings—procedure and effect of modifications. (1) Every member of a rating organization shall adhere to the filings made on its behalf by such organization, except that any plan Number 2 insurer may make written application to the insurance commissioner for permission to file a uniform percentage decrease or increase to be applied to the premium produced by the rating system so filed for a kind of insurance or for a class of insurance which is found by the insurance commissioner to be a proper rating unit for the application of such uniform percentage decrease or increase, or for a subdivision of a kind of insurance;

(a) comprised of a group of manual classifications which is treated as a separate unit for rate making purposes; or

(b) for which separate expense provisions are included in the filings of the rating organization. Such application shall specify the basis for the modification and shall be accompanied by the data upon which the applicant relies. A copy of the application and data shall be sent simultaneously to such rating organization.

(2) The insurance commissioner shall set a time and place for a hearing at which the insurer and such rating organization may be heard and shall give them not less than ten (10) days' written notice thereof. In the event the insurance commissioner is advised by the rating organi-

zation that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing. In permitting or denying such modification with respect to workmen's compensation insurance, the insurance commissioner shall give consideration to the operating methods and expense provisions of the insurer as compared with the expense provisions included in the rating system filed by such rating organization.

(3) The insurance commissioner shall issue an order permitting the modification for such insurer to be filed, if he finds it to be justified, and it shall thereupon become effective. He shall issue an order denying such application if he finds that the modification is not justified or that the resulting premiums would be excessive, inadequate or unfairly discriminatory.

(4) Each deviation permitted to be filed shall be effective for a period of one (1) year from the date of such permission, unless terminated sooner with the approval of the insurance commissioner.

(5) Any deviation adopted by the industrial accident board for plan Number 3 rates shall be final and without review or approval by the state insurance commissioner except that the said board shall file with the insurance commissioner's office a schedule of such deviations so adopted and a statement of the bases for such modification.

History: En. Sec. 15, Ch. 329, L. 1969.

40-5616. Membership in rating organization required. Every insurer, including the Montana state industrial accident board, writing workmen's compensation insurance in this state, shall be a member of a workmen's compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

History: En. Sec. 16, Ch. 329, L. 1969.

40-5617. Composition of rating organization. Such a rating organization shall have as members not less than five (5) insurers authorized to write and writing workmen's compensation insurance in this state, and whose combined experience is determined by the insurance commissioner to be reasonably adequate for rate-making purposes.

History: En. Sec. 17, Ch. 329, L. 1969.

40-5618. Industrial accident board as member of committee on operation of rating organization—other members. In a rating organization of which the Montana industrial accident board is a member, it shall be entitled, without election, to membership on any committee thereof established in connection with the operation of the rating organization in this state. One member of each such committee shall be chosen by the stock insurers and one by the nonstock insurers. Such committee shall consist of three (3) members as herein provided for.

History: En. Sec. 18, Ch. 329, L. 1969. **Repealing Clause**

Section 19 of Ch. 329, Laws 1969 repealed all acts and parts of acts in conflict therewith.

REVISED CODES OF MONTANA

VOLUME 3

Part 2

1969 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE
LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF
REPLACEMENT VOLUME 3 (PART 2) OF
THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 3
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For index see pocket supplement to Replacement Volume 9

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CHAPTER 1—OBLIGATIONS OF EMPLOYERS

41-103. (7758) **When not.**

Assumption of Risk

Where master, in an action against him for injuries sustained by a servant during course of employment, introduced evidence tending to show that the servant had actual or implied knowledge of the dangerous condition but voluntarily remained in the face of the danger, and that

the injury resulted as a usual and probable consequence of the dangerous condition, then refusal of the trial court to instruct the jury properly on assumption of risk deprived defendant of a possible defense and was prejudicial error. *Wollan v. Lord*, 142 M 498, 385 P 2d 102.

CHAPTER 3—TERMINATION OF EMPLOYMENT

Section 41-304. Termination at will.

41-305.1. Termination of employment because of attachment or garnishment prohibited.

41-304. (7789) Termination at will. An employment having no specified term may be terminated at the will of either party, on notice to the other, except where otherwise provided by sections 41-101 to 41-407 and 2-109 to 2-112 and 2-401 to 2-405, and except as provided in section 1 [41-305.1] of this act.

History: En. Sec. 2703, Civ. C. 1895; re-en. Sec. 5274, Rev. C. 1907; re-en. Sec. 7789, R. C. M. 1921; amd. Sec. 2, Ch. 245, L. 1969. Cal. Civ. C. Sec. 1999. Field Civ. C. Sec. 1029.

Amendments

The 1969 amendment added "and except as provided in section 1 of this act."

41-305.1. Termination of employment because of attachment or garnishment prohibited. No employer shall discharge or lay off an employee because of attachment or garnishment served on the employer against the wages of the employee.

History: En. Sec. 1, Ch. 245, L. 1969.

Title of Act

An act relating to termination of em-

ployment providing that garnishment or attachment of wages may not be grounds for termination of employment; amending section 41-304, R. C. M. 1947.

CHAPTER 7—PREFERENCE OF MONTANA LABOR IN PUBLIC WORKS CONTRACTS

Section 41-701. Preference of Montana labor in public works—wage scale—not to conflict with federal statutes.

41-701. (3043.1) Preference of Montana labor in public works—wage scale—not to conflict with federal statutes. In all contracts hereafter let for state, county, municipal, school, heavy highway or municipal construction, repair and maintenance work under any of the laws of this state there shall be inserted in each of said contracts a provision by which the contractor must give preference to the employment of bona fide Montana residents in the performance of said work, and that the said contractor must further pay the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed. "Standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions, applicable to the county or locality in which the work is being performed," means those wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions which are paid in the county or locality by other contractors for work of a similar character performed in that county or locality by each craft, classification or type of workman needed to complete a contract under this act. When work of a similar character is not being performed in the county or locality, the standard prevailing rate of wages including fringe benefits for health and welfare and pension contributions, and travel allowance provisions shall be those rates established by collective bargaining agreements in effect in the county or locality for each craft, classification or type of workman needed to complete the contract. No contract shall be let to any person, firm, association or corporation refusing to execute an agreement with the above-mentioned provisions in it; provided that, in contracts involving the expenditure of federal aid funds this act shall not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged soldiers, sailors and marines, and prohibiting as unlawful any other preference or discrimination among citizens of the United States. All public works contracts under this act shall be approved in writing by the legal adviser of the contracting state, county, municipal corporation, school district, assessment district or special improvement district body or officer prior to execution by the contracting public officer or officers. The Montana commissioner of labor and industry shall undertake to keep and maintain copies of collective bargaining agreements and other information from which rates and jurisdictional areas applicable to public works contracts under this act may be ascertained. Whenever the employer is

not signatory party to a collective bargaining agreement, those moneys designated as negotiated fringe benefits shall be paid to the employee as wages.

History: En. Sec. 1, Ch. 102, L. 1931; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969.

benefits for health and welfare and pension contributions and travel allowance provisions, providing for approval of public works contracts by the contracting state agency's legal adviser and requiring the commissioner of labor and industry to keep copies of collective bargaining agreements and other information.

Amendments

The 1969 amendment rewrote portions of this section, redefining the standard prevailing rate of wages to include fringe

CHAPTER 8—VOCATIONAL REHABILITATION AND EDUCATION

Section 41-803. Director of division of vocational rehabilitation.

41-803. Director of division of vocational rehabilitation. The division shall be administered, under the general supervision and direction of the state board, by a director appointed by such board in accordance with established personnel standards and on the basis of his education, training, experience, and demonstrated ability. In carrying out his duties under this act, the director

(a) to (c). * * * [Same as parent volume.]

(d) shall prepare and submit to the state board annual reports of activities and expenditures, and report as provided in section 2 [82-4002] of this act;

(e) to (g). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 74, L. 1947; amd. Sec. 3, Ch. 53, L. 1961; amd. Sec. 12, Ch. 93, L. 1969.

for "prior to each regular session of the legislature, estimates of sums required for carrying out this act and estimates of the amounts to be made available for this purpose from all sources" in subdivision (d).

Amendments

The 1969 amendment substituted "report as provided in section 2 of this act"

CHAPTER 9—STATE BOARD OF ARBITRATION AND CONCILIATION

Section 41-906. Decisions of board—report to governor.

41-906. (3057) Decisions of board—report to governor. Upon the receipt of said application and after such notice, the board shall proceed as before provided, and render a written decision, which shall be open to the public inspection, shall be recorded upon the records of the board, [and] the board shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 3335, Pol. C. 1895; re-en. Sec. 1675, Rev. C. 1907; re-en. Sec. 3057, R. C. M. 1921; amd. Sec. 13, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted "the board shall report as provided in section 2 of this act" for "and published at the discretion of the same in an annual report to be made to the governor on or before the first day of December in each year."

Compiler's Notes

The compiler has inserted the bracketed word "and."

CHAPTER 11—HOURS OF LABOR IN VARIOUS EMPLOYMENTS

Section 41-1123. Railway employees—hours of labor.

41-1123. (3081) Railway employees—hours of labor. On all lines of railroads or railways operated in whole or in part within this state, the time of labor of locomotive engineers, locomotive firemen, conductors, trainmen, operators, and agents acting as operators, employed in running or operating the locomotive engines or trains on or over such railroads or railways in this state, shall not at any time exceed twelve (12) consecutive hours, or to be on duty for more than sixteen (16) hours in the aggregate in any twenty-four (24) hour period. At least eight (8) hours shall be allowed them off duty before said engineers, firemen, conductors, trainmen, operators, and agents acting as operators, are again ordered or required to go on duty; provided, however, that nothing in this section shall be construed to allow any engineer, fireman, conductor, or trainman to desert his locomotive or train in case of accident, storms, wrecks, washouts, snow blockade, or any unavoidable delay arising from like causes, or to allow said engineer, fireman, conductor, or trainman to tie up any passenger or mail train between terminals.

History: En. Sec. 1, Ch. 5, L. 1907; Sec. 1741, Rev. C. 1907; re-en. Sec. 3081, R. C. M. 1921; amd. Sec. 1, Ch. 205, L. 1969.

Amendments

The 1969 amendment deleted "steam" before "railroads" at the beginning of the first sentence and reduced maximum consecutive hours of labor from sixteen to twelve.

CHAPTER 12—APPRENTICESHIP COUNCIL AND CONTRACTS

Section 41-1201. Apprenticeship council.

41-1202. Duties of state apprenticeship council.

41-1201. Apprenticeship council. (a) The governor of the state of Montana shall appoint an apprenticeship council, which shall be a part of the department of labor and industry, and shall consist of six (6) members, three (3) of whom shall be appointed from and be representative of active employers employing persons in recognized apprenticeable trades, and three (3) of whom shall be appointed from and be representative of active employee organizations whose members are employed in recognized apprenticeable trades. The terms of office of the members of the apprenticeship council first appointed by the governor of the state of Montana shall be as follows: One (1) representative each of employers and employees shall be appointed for one (1) year, two (2) years and three (3) years respectively. After the expiration of the original terms, each member shall be appointed by the governor of the state of Montana for a term of three (3) years. Each member shall hold office until his successor is appointed and has qualified, and any vacancy shall be filled by appointment by the governor of the state of Montana for the unexpired portion of the term. The commissioner of labor and industry, the state official who has been designated by the state board for vocational education as being in charge of trade and industrial education and the state official

who has immediate charge of the state public employment service shall be ex officio members of said council without vote. The council shall elect a chairman and vice-chairman from its voting membership, one (1) of which shall be a representative of employers and one (1) shall be a representative of employees, and each shall hold office for a term of one (1) year and until his successor is elected.

(b) to (d). * * * [Same as parent volume.]

(e) The commissioner of labor and industry may, subject to the approval of the appointed members of the council, appoint a director of apprenticeship and such other clerical, technical and professional staff as shall be necessary to carry out the provisions of this act. The director of apprenticeship shall serve as the secretary of the council, without a vote.

History: En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963.

Amendment

The 1963 amendment completely rewrote subsection (a), for previous version of which see parent volume; and added subsection (e).

41-1202. Duties of state apprenticeship council. The state apprenticeship council by a majority vote, shall:

(1) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this act;

(2) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this act;

(3) keep a record of apprenticeship agreements and upon performance thereof issue certificates of completion of apprenticeship;

(4) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and who

(5) may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

Related and supplemental instruction for apprentices, co-ordination of instruction with job experiences, and the selection and training of teachers and co-ordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

History: En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963.

sentence which read, "The voting members of the apprenticeship council are authorized to appoint such other personnel as may be necessary to aid the apprenticeship council in the execution of their functions under this act."

Amendment

The 1963 amendment deleted a final

CHAPTER 13—PAYMENT OF WAGES AND PROTECTION OF DISCHARGED EMPLOYEES

Section 41-1302. Penalty for failure to pay wages at times specified in law.

41-1303. Employees separated from employment before payday—wages, when payable.

41-1314.1. Enforcement.

41-1314.2. Authority to take wage assignments.

41-1302. (3085) Penalty for failure to pay wages at times specified in law. Any employer, as such employer is defined in this act, who fails to pay any of his employees, as provided in the preceding or following sections, or violates any other provision of this act, shall be guilty of a misdemeanor. A penalty shall also be assessed against and paid by such employer and become due such employee as follows:

A sum equivalent to the fixed amount of five (5%) per cent of the wages due and unpaid, shall be assessed for each day, except Sundays and legal holidays, upon which such failure continues after the day upon which such wages were due, except that such failure shall not be deemed to continue more than twenty (20) days after the date such wages were due.

It shall be the duty of the commissioner of labor to inquire diligently for any violations of this act, and to institute actions for the collection of unpaid wages and for the penalties provided for herein, in such cases as he may deem proper, and to enforce generally the provisions of this act.

Nothing herein contained shall be construed to limit the authority of the county attorney of any county of the state of Montana to prosecute actions, both civil and criminal, for such violations of this act as may come to his knowledge, or to enforce the provisions hereof independently and without specific direction of the commissioner of labor.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967.

Amendments

The 1967 amendment extended the application of the first sentence to violations of the entire act; substituted the present second sentence for "A penalty shall also attach to such employer and

become due such employee as follows: A sum equivalent to a penalty of five (5%) per cent of the wages due and not paid, as herein provided, as liquidated damages, and such penalty shall attach and suit may be brought in any court of competent jurisdiction to recover the same and the wages due"; inserted "for the collection of unpaid wages and for the" in the next to last paragraph; and made minor changes in phraseology.

41-1303. (3086) Employees separated from employment before pay-day—wages, when payable. Whenever any employee is separated from the employ of any such employer, then all the unpaid wages of such employee shall become due and payable within three (3) days, either through the regular pay channels or by mail if requested by the employee; provided however, that where an employer's payroll checks originate at an office outside the state of Montana the time provided herein for payment of wages shall be extended for three (3) additional days.

History: En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921; re-en. Sec. 3086, R. C. M. 1921; amd. Sec. 3, Ch. 169, L. 1941; amd. Sec. 2, Ch. 40, L. 1967.

Amendments

The 1967 amendment rewrote this section. For previous text, see parent volume.

41-1314.1. Enforcement. The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they may deem appropriate, to determine whether any person has violated any provision of this act or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this act.

The commissioner or his authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the commissioner.

History: En. Sec. 3, Ch. 40, L. 1967.

Title of Act

An act amending sections 41-1302 and 41-1303, R. C. M. 1947, relating to time for payment of wages; authorizing the

commissioner of labor to investigate violations; and authorizing said commissioner to accept assignments of wage claims and institute proceedings to enforce such claims.

41-1314.2. Authority to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee, and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this act. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section.

Any judgment for the plaintiff in a proceeding pursuant to this act shall include all costs reasonably incurred in connection with the proceeding, including attorneys' fees. If the proceeding is maintained by the commissioner, no court costs or fees shall be required of him, nor shall he be required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding.

The commissioner is authorized to issue, amend, and enforce rules and regulations for the purpose of carrying out the provisions of the act.

History: En. Sec. 4, Ch. 40, L. 1967.

CHAPTER 16—DEPARTMENT OF LABOR AND INDUSTRY

Section 41-1603. Commissioner of labor and industry—term—salary—oath.

41-1603. Commissioner of labor and industry—term—salary—oath. The term of office of the commissioner of labor and industry shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the department of labor and industry. If the legislative assembly does not specify the maximum salary of the commissioner, any increase in the salary of the commissioner must be approved by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The salary shall be payable monthly. Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by section 1, article XIX of the Montana Constitution.

History: En. Sec. 3, Ch. 177, L. 1951; amd. Sec. 1, Ch. 27, L. 1957; amd. Sec. 2, Ch. 225, L. 1963; amd. Sec. 20, Ch. 177, L. 1965; amd. Sec. 2, Ch. 237, L. 1967.

Amendments

The 1963 amendment substituted a provision for a maximum salary of \$7,500 for a provision fixing the salary at \$6,000.

The 1965 amendment deleted an opening clause relating to the term of office of the commissioner appointed in 1951; deleted "appointed thereafter" after "commissioner of labor and industry" in the first sentence; and deleted "and execute an official bond in the amount of one thousand dollars (\$1,000)" from the end of the section.

The 1967 amendment substituted the

second, third and fourth sentences for a provision in the former section fixing the maximum salary at \$7,500; and made minor changes in punctuation and phraseology.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

41-1607, 41-1608. Repealed.

Repeal

Sections 41-1607 and 41-1608 (Secs. 9, 10, Ch. 177, L. 1951; Sec. 12, Ch. 80, L.

1961), relating to the annual report of the department of labor and industry were repealed by Sec. 44, Ch. 93, Laws 1969.

CHAPTER 17—SAFETY CODES

- Section 41-1708. Short title.
 41-1709. Definitions.
 41-1710. Employers to furnish and require safety devices and practices.
 41-1711. Employer's duty to provide and maintain safe place of employment.
 41-1712. Removal or refusal to use safety devices prohibited.
 41-1713. Board's powers—duty to establish department of safety under a safety director—rule-making power—subpoena and other powers.
 41-1714. Compelling witnesses to appear in response to subpoena—contempt.
 41-1715. Board's power to prescribe safety devices and fix and order safety standards.
 41-1716. Notice of hearing on rules and codes.
 41-1717. Order directing additions, repairs, and improvements.
 41-1718. Notice of violation of safety code, order or rule—penalties for violations—hearings—injunction authorized.
 41-1719. Time allowed for compliance with order.
 41-1720. Order of closure or for cessation of work where place of employment an immediate menace to life or safety.
 41-1721. Judicial review of board's orders, rules or decisions.
 41-1722. Application for rehearing of order, decision, or rule of board.
 41-1723. Application for rehearing—contents—waiver—copies to adverse parties—procedure where no adverse parties.
 41-1724. Resolution of issues on rehearing—notice—disposition.
 41-1725. Periodic inspections of hazardous places of employment—report.
 41-1726. Workmen to notify employers of safety violations—complaint to board—investigation.
 41-1727. Code-making power.
 41-1728. Variations.
 41-1729. General research and review power of board—Power to appoint advisers.
 41-1730. Violation of safety provision—misdemeanor.
 41-1731. Public contractors subject to act.
 41-1732. Effect on existing structures and equipment.
 41-1733. Occupational health hazards.

41-1701 to 41-1707. Repealed.

Repeal

Sections 41-1701 to 41-1707 (Secs. 1 to 6, 8, Ch. 193, L. 1951), relating to safety codes of the industrial accident board,

were repealed by Sec. 30, Ch. 341, Laws 1969. For present provisions see sec. 41-1708 et seq.

41-1708. Short title. This act may be cited as the "Montana Safety Act."

History: En. Sec. 1, Ch. 341, L. 1969.

Title of Act

An act to provide a safety code for the

state of Montana, establishing a department of safety, providing for a safety director to be appointed by the industrial accident board, providing that the indus-

trial accident board have supervision over every place of employment and full power to enforce all laws and orders concerning safety in places of employment, prescribing methods for enforcement and admin-

istration of this act; amending section 92-101, R. C. M. 1947; and repealing sections 41-1701 through 41-1707, 92-1201 through 92-1210 and 92-1214 through 92-1222, R. C. M. 1947.

41-1709. Definitions. Unless context requires otherwise, in this act:

(1) "Board" means the industrial accident board of the state of Montana.

(2) "Employer" is defined as in section 92-410, R. C. M. 1947.

(3) "Code" means a standard body of rules for safety formulated, adopted and issued by the board under the provisions of this act.

(4) "Employee" and "workmen" are defined as in section 92-411, R. C. M. 1947.

(5) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change.

History: En. Sec. 2, Ch. 341, L. 1969.

41-1710. Employers to furnish and require safety devices and practices. Every employer shall furnish a place of employment which is safe for employees therein, and shall furnish and use, and require the use of, such safety devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably adequate to render the place of employment safe, and shall do every other thing reasonably necessary to protect the life and safety of employees.

History: En. Sec. 3, Ch. 341, L. 1969.

Liability for Violation

Employee of general contractor expanding paper company's facilities was properly denied right to introduce testimony, in suit against paper company, respecting minimum safety standards for construction industry as promulgated by state in-

dustrial accident board since paper company's right to oversee and co-ordinate work of independent contractors did not impose duty on company to ensure that contractor's work would be done in compliance with all various safety codes. *Hackley v. Waldorf-Horner Paper Products Co.*, 149 M 286, 425 P 2d 712.

41-1711. Employer's duty to provide and maintain safe place of employment. An employer who is the owner or lessee of any real property in this state shall not construct or cause to be constructed or maintained any place of employment that is unsafe.

Every employer who is the owner of a place of employment or lessee thereof, shall repair, and maintain the same as to render it safe.

History: En. Sec. 4, Ch. 341, L. 1969.

41-1712. Removal or refusal to use safety devices prohibited. No person shall remove, displace, damage, destroy or carry off or refuse to use any safety device or safeguard furnished and provided for his use

in any employment or place of employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment, or fail to do any other thing reasonably necessary to protect the life and safety of such employees.

History: En. Sec. 5, Ch. 341, L. 1969.

41-1713. Board's powers—duty to establish department of safety under a safety director—rule-making power—subpoena and other powers. In the administration of this act the board:

(1) Is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment.

(2) Shall establish a department of safety under the supervision of a safety director, to be appointed by the board, to carry out the provisions of this act. The safety director shall be a person with at least two (2) years' experience or training in the field of industrial safety.

(3) May make, establish, promulgate and enforce all necessary and reasonable rules and provisions for the purpose of carrying this act into effect and in reference to the investigation of all violations of this act and fix and set the time and place for all hearings which may be necessary or expedient for the purpose of carrying the provisions of this act into effect.

(4) May on its own motion or at the request of others, subpoena witnesses, administer oaths, take depositions and fix the fees and mileage of witnesses and compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of this state, and the board shall provide for defraying the expenses thereof.

History: En. Sec. 6, Ch. 341, L. 1969.

41-1714. Compelling witnesses to appear in response to subpoena—contempt. (1) The board or any member thereof, before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to him in the course of such proceeding, and ask the court to compel the witness to attend and testify or produce such papers before the board.

(2) The court, upon such application, shall enter an order directing the witness to appear before the court at a time and place to be fixed

by the court then and there to show cause why he has not attended and testified or produced the papers before the board or any member thereof.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the board or member thereof, the court thereupon shall enter an order that the witness appear before the board or member thereof at a time and place to be fixed in such order, and testify and produce the required papers and upon failure to obey the order the witness shall be dealt with as for contempt of court.

History: En. Sec. 7, Ch. 341, L. 1969.

41-1715. Board's power to prescribe safety devices and fix and order safety standards. The board may, after hearing had upon its own motion or upon complaint, by safety orders, rules or otherwise:

(1) Declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law.

(2) Fix reasonable standards and prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of the employees and places of employment.

(3) Fix and order such reasonable standards for the construction, repair and maintenance of places of employment and equipment as shall render them safe.

(4) Require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may demand.

History: En. Sec. 8, Ch. 341, L. 1969.

41-1716. Notice of hearing on rules and codes. Upon the fixing of a time and place for the holding of a public hearing for the purpose of considering and issuing rules and codes, as authorized in this act, the board shall cause a notice of the hearing to be published in one or more daily newspapers of general circulation published in this state and in such other papers of general circulation in this state as the board may deem expedient. The notice shall contain a brief statement of the time, place and purpose of the hearing. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or code issued or adopted by the board after the hearing.

History: En. Sec. 9, Ch. 341, L. 1969.

41-1717. Order directing additions, repairs, and improvements. Whenever the board, after a hearing had upon its own motion or upon complaint, finds that an employment or place of employment is not safe, or that the practices or methods or operations or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of the employees in such employments

and place of employment, the board shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employment and places of employment. The board may in the order direct that such additions, repairs, improvements or changes be made and such safety devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in the order.

History: En. Sec. 10, Ch. 341, L. 1969.

41-1718. Notice of violation of safety code, order or rule—penalties for violations—hearings—injunction authorized. (1) The board or authorized representative thereof with the approval of the board, or the safety director, upon finding any violation of any duly promulgated safety code, order or rule involving failure to install or maintain any safety appliance, device or safeguard required by such safety order, code or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation, and when such use is prohibited shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided, or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the board, or who fails or refuses to file a report of accident as required by section 92-808, R. C. M. 1947, is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than one thousand dollars (\$1,000). This civil penalty may be imposed and collected by the board in an action brought in the name of the state of Montana in the county in which the employer resides or in which he employs workmen. Any penalty collected under this subsection shall be paid into the industrial accident administrative earmarked revenue account.

Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus or place of employment as provided for in this section may request a hearing before the board within twenty (20) days after entry of such order. The board shall then affirm, modify or revoke the order and all procedures of this act relative to entry of orders, rehearing and appeal shall apply.

In addition to all other remedies provided in this act, the board may bring an action to enjoin any violation of any duly promulgated safety order, code or rule.

History: En. Sec. 11, Ch. 341, L. 1969.

41-1719. Time allowed for compliance with order. The board shall grant such time as may be reasonably necessary for compliance with any order, and any person affected by the order may petition the board for an extension of time, which the board shall grant if it finds the extension of time necessary.

History: En. Sec. 12, Ch. 341, L. 1969.

41-1720. Order of closure or for cessation of work where place of employment an immediate menace to life or safety. The board or authorized representative thereof, with the approval of the board, or the safety director, may order any place of employment closed, or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workmen employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the workmen employed therein. Upon issuance of any such order, the board or safety director shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment thereof, the board shall affirm, modify, or set aside the order. Nothing in this section shall empower the safety director to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that for those employments or places of employment for which no code has been adopted and where it is found by the safety director that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workmen there employed, the safety director may order that portion of the plant, installation or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed four (4) hours unless such period be extended by order of the board.

History: En. Sec. 13, Ch. 341, L. 1969.

41-1721. Judicial review of board's orders, rules or decisions. (1) The orders of the board, its rules, findings and decisions, made and entered under the provisions of this act, may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within thirty (30) days after an application for rehearing is denied, or, if the application is granted, within thirty (30) days after

rendition of the decision on the rehearing, any party affected thereby may appeal to the district court for the county in which is situated the place of employment complained of for the purpose of having the lawfulness of the original order, or decision, or the order or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the board and describing the order or decision sufficiently for purposes of identification. The notice shall be signed by the party appealing or his attorney and a copy thereof shall be served by certified mail upon the board. Within ten (10) days after the receipt of the notice, the board shall file with the clerk of court the record of proceedings before the board, including a transcript of all the evidence adduced upon the hearing and any rehearing before the board. The district court, on application for good cause shown, may extend the time within which the board shall file the record, transcript and evidence. The cause shall be tried in the same manner as a civil action, provided that no new or additional evidence may be introduced in the court, but the cause shall be heard on the record to the court as certified to it by the board.

(4) The appeal shall not be extended further than to determine whether or not:

(a) The board acted without or in excess of its powers, or in violation of the law;

(b) The order or decision was procured by fraud;

(c) The order, decision or rule is unreasonable;

(d) If findings of fact are made, the finding of fact supports the order or decision under review.

(5) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases.

History: En. Sec. 14, Ch. 341, L. 1969.

41-1722. Application for rehearing of order, decision, or rule of board. Any party aggrieved directly or indirectly by any final order, decision or rule of the board made or entered pursuant to this act may apply to the board within twenty (20) days after the order of the board for rehearing in respect to any matters determined or covered by such final order, decision or rule, and specified in the application, for hearing within the time and in the manner prescribed in this act.

History: En. Sec. 15, Ch. 341, L. 1969.

41-1723. Application for rehearing—contents—waiver—copies to adverse parties—procedure where no adverse parties. (1) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers the final order, decision or rule is unjust or unlawful, and every issue to be considered by the board.

(2) The applicant for rehearing shall be deemed to have finally waived all objections, irregularities and illegalities concerning the mat-

ters upon which rehearing is sought other than those set forth in the application.

(3) A copy of the application for rehearing shall be served immediately on all adverse parties, who may file an answer thereto within ten (10) days after being served.

(4) If there are no adverse parties, the application may be heard ex parte, or the board may require the application for rehearing to be served on such parties as may be designated by the board.

History: En. Sec. 16, Ch. 341, L. 1969.

41-1724. Resolution of issues on rehearing—notice—disposition. (1) Upon the filing of the application for rehearing, if the issues raised thereby have theretofore been adequately considered by the board, it may determine the same by confirming, without hearing, its previous determination, or if a rehearing is necessary to determine one or more of the issues raised, the board shall order a rehearing thereon and consider and determine the matters raised by such application.

(2) Notice of the time and place of the rehearing shall be given to the applicant, the adverse parties and such other persons as the board may order.

(3) If after the rehearing and the consideration of all the facts, including those arising since the making of the order or decision involved, the board shall be of the opinion that all or any part of the original order or decision is in any respect unjust or unwarranted, or should be changed, the board shall abrogate, change or modify the same.

(4) An order or decision made after the rehearing, abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the board.

(5) An application for rehearing is considered denied by the board unless it has been acted upon within thirty (30) days from the date of filing; provided that the board may, upon good cause being shown therefor, extend the time within which it may act upon an application for rehearing for not exceeding an additional thirty (30) days.

History: En. Sec. 17, Ch. 341, L. 1969.

41-1725. Periodic inspections of hazardous places of employment—report. (1) The board shall inspect from time to time all the places of employment defined in the Montana Workmen's Compensation Act as being hazardous and the machinery and appliances therein contained for the purpose of determining whether they conform to law.

(2) A report of such periodic inspection shall be filed in the office of the board and a copy thereof given the employer. Such report shall not be open to public inspection, or made public except on order of the board, or by the board or a member of the board in the course of a hearing or proceeding.

History: En. Sec. 18, Ch. 341, L. 1969.

41-1726. Workmen to notify employers of safety violations—complaint to board—investigation. (1) A workman shall notify his employer of any violation of law or regulation pertaining to safety of places of employment when the violation comes to the knowledge of the workman.

(2) If the employer fails to remedy the violation, the workman may complain in writing to the board of the violation.

(3) Upon receiving the complaint the board shall forthwith inquire or make an inspection as to the safety of the place of employment. A copy of the report of inspection shall be given to the complainant.

History: En. Sec. 19, Ch. 341, L. 1969.

41-1727. Code-making power. (1) In addition to such other powers and duties as may be conferred upon it by law, the board shall have the power to promulgate, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe. In the performance of its duties the board may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees; and others to suggest safety codes or amendments thereto. All such safety codes and rules shall, when adopted, be not inconsistent with the then existing widely accepted codes of such engineering bodies as the American Society of Mechanical Engineers, the American Standards Association, the American Society of Safety Engineers, the United States of America Standards Institute, the National Fire Protection Association, and, in addition, agencies of the federal government with responsibilities for administering worker safety programs, and other accepted codes. Any amendments made to such codes by the board shall be such that when amended such code shall be consistent with the widely accepted safety codes as then existing. All codes and all amendments thereto and repeals thereof shall take effect thirty (30) days after certified copies thereof shall be filed in the office of the secretary of state.

(2) Every code adopted and every amendment or repeal thereof shall be published in such manner as the board may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the board under the provisions of this act, together with the dates of adoption thereof, shall be published from time to time.

History: En. Sec. 20, Ch. 341, L. 1969.

41-1728. Variations. Any employer may consult with the board for advice and assistance in complying with the provisions of this act or any codes adopted hereunder. In case of practical difficulties, the board may grant variations from particular provisions of the code and permit the use of other or different devices or methods; provided, however, that such variations shall be granted only when it is clear that the reasonable safety of the workers in said plant or place of employment is not thereby endangered. In any case where the board shall decline or refuse to grant

any request for variations on the ground that the safety of the workers involved would be endangered, the employer may request a rehearing as specified in this act. A properly indexed record of all variations made shall be kept in the office of the board and be open to public inspection.

History: En. Sec. 21, Ch. 341, L. 1969.

41-1729. General research and review powers of board—power to appoint advisers. The board may: (1) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through:

(a) Research, conferences, lectures and uses of public communications media,

(b) Collection and dissemination of accident statistics, and

(c) Development of staff competent in the review of safety codes.

(2) Appoint advisers who shall be compensated by the board if necessary, and who shall assist the board in establishing standards of safety. The board may adopt and incorporate in its orders such safety recommendations as it may receive from such advisers.

History: En. Sec. 22, Ch. 341, L. 1969.

41-1730. Violation of safety provision—misdemeanor. In addition to all other penalties herein provided: Every employer, workman or other person, who, either individually or acting as an officer, agent, or employee of a corporation or other person, violates any safety provision of this act, or who, directly or indirectly, knowingly induces another to do so is guilty of a misdemeanor.

History: En. Sec. 23, Ch. 341, L. 1969.

41-1731. Public contractors subject to act. Every contractor performing services for the state of Montana or any political subdivision thereof, shall be required to comply with the safety rules, codes and provisions of this act, as a part of his contract.

History: En. Sec. 24, Ch. 341, L. 1969.

41-1732. Effect on existing structures and equipment. Nothing contained in this act shall prevent the use of existing buildings, structures, and equipment during their lifetime when they are maintained in good condition, are properly safeguarded, and conform to the applicable safety standards required by Montana safety codes effective prior to the effective date of this act, and provided that replacements and alterations shall conform to all provisions of this act.

History: En. Sec. 25, Ch. 341, L. 1969.

Compiler's Notes

Chapter 341, Laws 1969 took effect July 1, 1969.

41-1733. Occupational health hazards. The board shall report occupational health hazards discovered in its investigations and inspection of places of employment to the state board of health and shall co-oper-

ate with the state board of health in carrying out its duties as specified in Title 69, chapter 42, R. C. M. 1947.

History: En. Sec. 26, Ch. 341, L. 1969.

Separability Clause

Section 27 of Ch. 341, Laws 1969 read
"If any of the provisions of this act are
declared or held to be invalid or unconsti-

tutional, such holding shall not affect the
validity of the act as a whole, or any part
thereof which can be given effect without
the part so held to be unconstitutional or
invalid."

CHAPTER 19—WINTER WORK PROGRAMS

Section 41-1901. Definition of terms.

41-1902. Municipal winter work committees authorized—composition and appointment of members.

41-1903. Terms of work committee members—no compensation.

41-1904. Meetings and officers of work committee.

41-1905. Promotion of winter work program.

41-1906. State employment service to co-operate.

41-1907. Minutes of work committee filed—availability to legislators.

41-1901. Definition of terms. As used in this act (1) "Winter work program" means a program to promote and encourage the accomplishment of work that would alleviate the rolls of the unemployed during the winter months.

(2) "Winter work committee" is a local committee appointed to effect the program.

History: En. Sec. 1, Ch. 68, L. 1965.

Title of Act

An act concerning a winter work program.

41-1902. Municipal winter work committees authorized—composition and appointment of members. The mayor of any municipality may appoint a winter work committee composed of at least five (5) members. The members shall be from various economic groups including labor, industry, business, welfare and news media. In municipalities where the economic groups are represented by organizations, the mayor shall give notice to each organization that he is going to make the appointments and shall set a date by which names must be submitted. On the date set for submittal, he shall select one member from each of the economic groups.

History: En. Sec. 2, Ch. 68, L. 1965.

41-1903. Terms of work committee members—no compensation. Original appointments shall be for five (5), four (4), three (3), two (2) and one (1) years. The original terms shall be determined by lot. After the original appointments have expired, terms shall be for five (5) years. There shall be no compensation for service on this committee.

History: En. Sec. 3, Ch. 68, L. 1965.

41-1904. Meetings and officers of work committee. The committee shall meet within ten (10) days of appointment by the mayor. They shall select a chairman and a secretary and other necessary officers. Thereafter, the committee shall meet at least quarterly and at such other times as may be necessary, convenient or desired.

History: En. Sec. 4, Ch. 68, L. 1965.

41-1905. Promotion of winter work program. The committee shall work through public service advertising and through public relations to promote the winter work program.

History: En. Sec. 5, Ch. 68, L. 1965.

41-1906. State employment service to co-operate. The employees of free public employment offices of the Montana state employment service shall co-operate with the committee.

History: En. Sec. 6, Ch. 68, L. 1965.

41-1907. Minutes of work committee filed—availability to legislators. Minutes of the meetings of the committee shall be filed by the secretary of the committee with the mayor of the municipality who shall keep them as other public records. Members of the legislative assembly may use these minutes to determine the employment problems of the municipalities involved.

History: En. Sec. 7, Ch. 68, L. 1965.

CHAPTER 20—RESTAURANT, BAR AND TAVERN WAGE PROTECTION ACT

- Section 41-2001. Short title.
 41-2002. Bond required of lessee.
 41-2003. Purpose of act.
 41-2004. Definition of terms.
 41-2005. Bond to be filed by lessee—amount—ownership affidavit.
 41-2006. Time of filing of bond—terms of bond—maintenance of bond required.
 41-2007. Liability of lessor and lessee for unpaid wages.
 41-2008. Lessee's business enjoined until bond filed.
 41-2009. Certification of lessee on filing of bond.
 41-2010. New or additional bond—sureties.
 41-2011. Disposition of fees.

41-2001. Short title. This act shall be known as the Restaurant, Bar and Tavern Wage Protection Act.

History: En. Sec. 1, Ch. 155, L. 1965.

Title of Act

An act requiring the lessee of restaurants, bars or taverns to file payroll

bonds for the protection of employees of lessees where the equipment, appliances, and other accessories necessary for the conduct of business therein at the place of business are owned by the lessor.

41-2002. Bond required of lessee. From and after the effective date of this act, it shall be unlawful for any person to lease a premise to be used as the place for conducting a restaurant, bar or tavern business, where the equipment, appliances and other accessories necessary for the conduct of business therein are owned by the lessor, without first having filed with the commissioner of labor and industry a bond in accordance with the requirements of section 5 [41-2005] of this act.

History: En. Sec. 2, Ch. 155, L. 1965.

41-2003. Purpose of act. The purpose of this act is to protect employees of lessees conducting business as restaurants, bars and taverns employed under the circumstances of ownership of the equipment, ap-

pliances and other accessories as outlined in section 2 [41-2002] of this act and to assure the payment of wages to such employees in the event the lessee ceases operation of his business and is unable to pay the wages due and owing to his employees.

History: En. Sec. 3, Ch. 155, L. 1965.

41-2004. Definition of terms. For the purposes of this act the words and phrases used herein have the following meaning: (1) "Person" includes any establishment, firm, partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

(3) "Lessor" means one who has leased premises, equipment, appliances or accessories for a definite or indefinite period, by a written or parol lease.

(4) "Lessee" means one to whom a lease is made.

(5) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(6) "Liquor" means and includes any alcoholic, spirituous, vinous, fermented, malt or other liquor, which contains more than one per centum (1%) of alcohol by weight, but shall not mean or include beer as that term is defined in the Montana Beer Act by subsection (b) of section 4-302, Revised Codes of Montana, 1947.

(7) "Beer" means any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any similar products, in drinkable water, containing not more than four per centum (4%) alcohol by weight.

(8) "Employee" means a person who works for wages or salary in the service of an employer.

(9) "Business" means a commercial enterprise of any kind involving the buying and selling of goods.

(10) "Equipment" means the articles, furnishings, supplies and apparatus used in a business.

(11) "Appliances" means all devices and apparatus used in the conduct of business.

(12) "Accessories" means those articles, furnishings, supplies, devices and other apparatus which are used in and contribute in a secondary way, along with the appliances and equipment, to the conduct of a business.

History: En. Sec. 4, Ch. 155, L. 1965.

41-2005. Bond to be filed by lessee—amount—ownership affidavit. Every person who leases from another person premises for the purpose of conducting therein a business as a restaurant, bar or tavern, or who leases equipment, appliances or accessories for such purpose, is hereby required to file a bond equal to at least double the amount of the semi-monthly payroll with the commissioner of labor and industry and an

affidavit showing the name of the owner of the equipment, appliances and other accessories necessary for the conduct of business therein.

History: En. Sec. 5, Ch. 155, L. 1965.

41-2006. Time of filing of bond—terms of bond—maintenance of bond required. The bond and affidavit required by section 5 [41-2005] of this act shall be filed with the commissioner of labor and industry by July 1 and February 1 of each year. The state of Montana shall be named as the obligee therein with good and sufficient sureties to be approved by the attorney general of the state of Montana. Said bond shall at all times be kept in full force and effect and any cancellation or revocation thereof or withdrawal of the sureties therefrom shall automatically revoke and suspend the certificate issued to the lessee therein as provided in section 9 [41-2009] of this act until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided. Such bond shall be conditioned to assure that in any lease transaction of the type referred to in section 2 [41-2002] of this act the persons who perform labor or other personal services for the lessee are guaranteed their wages in the event the lessee ceases operation of the business, for any reason, and is unable to pay the wages due and owing the employees.

History: En. Sec. 6, Ch. 155, L. 1965.

41-2007. Liability of lessor and lessee for unpaid wages. Upon non-payment of wages, if no bond has been filed as provided for in this act, the employees of the lessee may recover from either the lessor or lessee who shall be jointly and severally liable in accordance with the provisions of sections 41-1302 and 41-1306, Revised Codes of Montana, 1947.

History: En. Sec. 7, Ch. 155, L. 1965.

41-2008. Lessee's business enjoined until bond filed. If any person engages in the restaurant, bar or tavern business, as lessee, without having first filed a bond as required by section 5 [41-2005] of this act, the attorney general of the state of Montana, the commissioner of labor and industry of the state of Montana, or any citizen, group of citizens or any association in the county where the violator conducts his business may institute an action to enjoin such person from engaging in the business until compliance with this act has been met.

History: En. Sec. 8, Ch. 155, L. 1965.

41-2009. Certification of lessee on filing of bond. Upon filing a bond as required by section 5 [41-2005] of this act and after payment of two (\$2) dollars, as application fee, the commissioner of labor and industry shall issue to the lessee applying a certificate stating that the lessee is duly bonded and entitled to conduct a restaurant, bar or tavern business in the state of Montana.

History: En. Sec. 9, Ch. 155, L. 1965.

41-2010. New or additional bond—sureties. The commissioner of labor and industry may require a new bond or a bond of a greater amount than double the semimonthly payroll whenever the commissioner deems

it necessary for the protection of the employees of a lessee. The commissioner may, after due notice given, discharge the existing sureties from further liability and require that other sureties be provided.

History: En. Sec. 10, Ch. 155, L. 1965.

41-2011. Disposition of fees. All fees and moneys collected pursuant to section 9 [41-2009] of this act shall be credited to a special account to be known as the restaurant, bar and tavern employees wage protection fund, and shall be used by the commissioner of labor and industry to carry out the provisions of this act.

History: En. Sec. 11, Ch. 155, L. 1965.

Separability Clause

Section 12 of Ch. 155, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all

valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 21—LABOR SAFETY STUDY COMMISSION

Section 41-2101. Intent and purpose of act.

41-2102. Appointment of commission—scope of work.

41-2103. Composition of commission.

41-2104. Distribution of proposed changes to industry and legislature.

41-2105. Legislative adoption required.

41-2106. Employment of secretary and research services by commission.

41-2107. Reimbursement of commission members.

41-2108. Adoption of rules—records.

41-2101. Intent and purpose of act. The intent and purpose of this act is to establish a commission to suggest changes in the laws of Montana for the purpose of governing the safety provisions in places of employment and to regulate the conduct of the employer-employee relationship in matters pertaining to safety in order to insure, as much as possible, safe places of employment and to protect and preserve the physical health and well-being of employees and to endeavor to cut down employee accidents and to revise and modernize the safety laws in order to promote safety in employment and speedy, effective and economical ways of administering such laws.

History: En. Sec. 1, Ch. 323, L. 1967.

Title of Act

An act authorizing and empowering the commission of labor of the state of Montana to recommend changes in the laws of Montana relating to safety codes, safety positions, and general safety laws; creating a commission to prepare suggested changes in safety laws and propose new laws and propose new recommendations as to the position of safety; prescribing the membership and the powers and duties of

said commission; providing for the employment of a secretary-stenographer of the commission and employment of research facilities, if deemed necessary; providing for the payment of actual travel and other expenses incurred by members of said commission in the discharge of their duties; providing that such recommended changes or new provisions in the laws of Montana governing safety codes shall be submitted to the Forty-First Legislative Assembly of the state of Montana for its consideration.

41-2102. Appointment of commission—scope of work. That within thirty (30) days following the adjournment of this legislative assembly, the governor of the state of Montana shall appoint a commission of eight

(8) persons, which commission shall meet and organize itself within thirty (30) days following appointment; and which commission shall make a complete study, consider and prepare suggested changes in the safety codes of Montana.

History: En. Sec. 2, Ch. 323, L. 1967.

41-2103. Composition of commission. The commission shall be composed of the commissioner of labor as its chairman, two representatives to be selected from industry, two representatives to be selected from labor, the chairman of the industrial accident board, or his designated representative, a member of the medical profession, and a member of the bar association of Montana.

History: En. Sec. 3, Ch. 323, L. 1967.

41-2104. Distribution of proposed changes to industry and legislature. The commission so appointed shall prepare its suggested changes as well as to distribute copies to industry and labor for their consideration and suggestions as they may submit to the commission. Such recommended changes or new provisions in the laws of Montana governing safety codes shall be submitted to the Forty-First Legislative Assembly of the state of Montana for its consideration.

History: En. Sec. 4, Ch. 323, L. 1967.

Cross-References

Montana Safety Act, sec. 41-1708 et seq.

41-2105. Legislative adoption required. Any suggested changes promulgated under this act shall be effective only upon adoption by the legislature.

History: En. Sec. 5, Ch. 323, L. 1967.

41-2106. Employment of secretary and research services by commission. The said commission may from time to time employ a secretary-stenographer, as it deems necessary, to assist in its work, and shall fix the compensation of such secretary-stenographer. It shall further have the power to employ the services of any research agency which it deems necessary in the discharge of its duties.

History: En. Sec. 6, Ch. 323, L. 1967.

41-2107. Reimbursement of commission members. Members of said commission shall serve without compensation but shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, including attendance at meetings.

History: En. Sec. 7, Ch. 323, L. 1967.

41-2108. Adoption of rules—records. The commission is empowered to adopt rules for its own procedure, and to make all arrangements for its meetings, and to carry out the purpose for which it is created. The commission is directed to keep accurate records of its activities and proceedings.

History: En. Sec. 8, Ch. 323, L. 1967.

Separability Clause

Section 9 of Ch. 323, Laws 1967 read
"If any sentence, section, clause, or

phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act. The legislative assembly of the state of Montana hereby declares that any one or more sections, sentences, clauses or phrases may be declared unconstitutional or invalid."

Repealing Clause

Section 10 of Ch. 323, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 11 of Ch. 323, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 3, 1967.

CHAPTER 22—NURSES—EMPLOYMENT PRACTICES

- Section 41-2201. Purpose of act.
 41-2202. Definitions.
 41-2203. Improper employment practices.
 41-2204. Bargaining units—determination by mutual consent or application to board.
 41-2205. Proof of status as bargaining unit.
 41-2206. Determination of question on status of bargaining unit—petition—election—redetermination.
 41-2207. Duties of board relating to bargaining unit determinations.
 41-2208. Proceedings to restrain improper employment practices—other relief—appeal.
 41-2209. Unlawful strikes.

41-2201. Purpose of act. The purpose of this act is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and infirm in the state of Montana, and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

History: En. Sec. 1, Ch. 320, L. 1969.

Title of Act

An act providing for the adoption of orderly procedures for establishing desirable employment practices for registered

professional and licensed practical nurses employed in health care facilities; establishing procedures for developing employment standards; providing rule-making authority to the state board of health.

41-2202. Definitions. As used in this act, unless the context clearly requires otherwise:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications, determined pursuant to section 4 [41-2204] of this act.

(2) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility, but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order.

(3) "Health care facility" means a hospital or nursing home, or other agency or establishment, employing employees as defined in this act, whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals or both.

(4) "Board" or "board of health" means the state board of health.

(5) "Strike" shall mean any work stoppage caused by the employees of a health care facility as defined in section 2 [subdivision (3) of this section] of this act, that interferes with the operation of the health care facility or affects the care of patients in the health care facility.

History: En. Sec. 2, Ch. 320, L. 1969.

41-2203. Improper employment practices. It is an improper employment practice for a health care facility to do one or more of the following:

(1) Interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(2) Initiate, create, dominate, contribute to or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(3) Discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(4) Refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing, and have their representative sign, any agreement arrived at through negotiations and discussion;

(5) Unilaterally exclude from work or prevent from working, or discharge any one or more employees, when the purpose of such action is in whole or in part, to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

History: En. Sec. 3, Ch. 320, L. 1969.

41-2204. Bargaining units—determination by mutual consent or application to board. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility, or representatives of employees may apply to the state board of health and said board, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.

History: En. Sec. 4, Ch. 320, L. 1969.

41-2205. Proof of status as bargaining unit. An employee organization is considered to be the duly designated representative of all the

employees in an appropriate unit for the purpose of section 3 [41-2203] of this act if it can show evidence that bargaining rights have been assigned to it by a majority of the employees in that unit.

History: En. Sec. 5, Ch. 320, L. 1969.

41-2206. Determination of question on status of bargaining unit—petition—election—redetermination. (1) If the right of an employee organization to represent the employees in an appropriate unit is questioned by the authority in charge of the facility employing the employees, the employee organization may petition the board of health for a determination. The board of health, or his representative, shall investigate and determine the composition of an appropriate unit, if such determination has not previously been made under section 4 [41-2204] of this act, and shall determine the representative, if any, designated to represent the employees in the appropriate unit.

(2) An employee organization found by the state board of health to be authorized by at least thirty per cent (30%) of the employees in an appropriate unit may apply for an election by secret ballot to determine its right to represent the employees in that unit. If more than one employee organization claims to represent employees in that unit, the state board of health may conduct an election by secret ballot to determine which is authorized to represent the unit. If any employee organization receives a majority of the valid votes cast at the election, it is considered to be authorized to represent all the employees in that unit for the purpose of section 3 [41-2203] of this act.

(3) A determination under this section remains in effect for at least one (1) year and until either the health care facility or an employee organization shall apply for a redetermination.

History: En. Sec. 6, Ch. 320, L. 1969.

41-2207. Duties of board relating to bargaining unit determinations. The board of health may: (1) Set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under subsection 2, section 4 [41-2204], or subsection 1, section 6 [41-2206] of this act.

(2) Determine, on its own motion, by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units. When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the board may make such determination on the basis of such general classification. The health care facility or employee organization may, within thirty (30) days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification and hearing shall be held on such petition.

(3) Adopt and promulgate rules and regulations as to times and places for hearing and notice thereof so as to provide adequate notice

and opportunity to be heard to all interested parties; as to elections; and so as to carry into effect the provisions of this act.

History: En. Sec. 7, Ch. 320, L. 1969.

41-2208. Proceedings to restrain improper employment practices—other relief—appeal. The board of health, a health care facility or an employee organization qualified to apply for an election under section 6 [41-2206] of this act may, in the name of its members, or in its name, institute proceedings to restrain the commission of any improper practice listed in section 3 [41-2203] of this act or appeal from any determination by the board. The proceeding may be instituted in the district court for any county in which the health care facility does business. The court in such an action may grant mandatory or prohibitory relief, or, on appeal, adjudicate whether the board has acted in abuse of discretion or upon arbitrary or discriminatory rules or regulations, in which event the court may reverse or modify such determination.

History: En. Sec. 8, Ch. 320, L. 1969.

41-2209. Unlawful strikes. It shall be unlawful for any employee of a health care facility as defined in section 2 [41-2202] of this act to participate in a strike if there is another strike in effect at another health care facility within a radius of 150 miles. Employees of a health care facility as defined in section 2 [41-2202] of this act or their duly elected representative must give the health care facility thirty (30) days written notice of any strike by them and must specify in the notice the day the strike is to begin.

History: En. Sec. 9, Ch. 320, L. 1969.

Separability Clause

Section 10 of Ch. 320, Laws 1969 read
“This act shall be severable, and should

any part or provision hereof be held to be unconstitutional such declaration will not invalidate the remaining provisions hereof.”

TITLE 42—LANDLORD AND TENANT—HIRING

CHAPTER 1—HIRING—IN GENERAL

42-105. (7734) Must repair injuries, etc.

References

Kintner v. Harr, 146 M 461, 408 P 2d 487.

CHAPTER 2—HIRING OF REAL PROPERTY—OF PERSONAL PROPERTY

42-201. (7741) Lessor to make dwelling house fit for its purpose.

References

Kintner v. Harr, 146 M 461, 408 P 2d 487.

42-203. (7743) Term of hiring when no limit is fixed.

Construction of Oral Farm Lease

Judgment for tenant in action for construction of an oral farm lease was reversed and the case was remanded for a new trial where the evidence was insufficient to show either a mutual agreement or usage and the record was completely confused as to when the lease commenced. Enott v. Hinkle, 140 M 206, 369 P 2d 413, 414.

Notice to Quit

Landlord could not maintain an action for unlawful detainer where notice to quit was not given to tenant thirty days prior to expiration of year to year tenancy. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 91.

Oral Lease

Under this section it is possible to have an oral lease for at least one year without an expression as to time therein. This is consistent with section 13-606, statute of frauds, which voids an oral agreement for the leasing of realty of a period longer than one year. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 89.

Entry by a tenant under an invalid oral lease may create a tenancy from year to year, month to month, or a tenancy at will depending upon the circumstances. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 89.

42-205. (7745) Renewal of lease by lessee's continued possession.

Notice to Quit

Where notice to quit was not given by landlord to tenant thirty days prior to

Presumption as to Term

When tenant, pursuant to an oral agreement, entered into possession of property on April 1, 1957 to conduct a meat processing and selling business, his hiring of the property was presumed to be for one year from its commencement. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 89.

The presumption that hiring is to be for one year is a rebuttable presumption. If the presumption is not controverted, the facts must be found according to the presumption. If it is controverted, the presumption must be given weight as evidence. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 90.

Tenancy from Month to Month

Payment of a monthly rental does not compel the conclusion that a tenancy is from month to month where other facts indicate to the contrary. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87 90.

Tenancy from Year to Year

Where tenant hired property for meat business under an oral agreement the tenancy was initially for a year with implied renewals for one year resulting in a tenancy from year to year. Roseneau Foods, Inc. v. Coleman, 140 M 572, 374 P 2d 87, 90.

expiration of year to year tenancy, tenancy was deemed to be renewed for another year and unlawful detainer action

could not be maintained by landlord. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 91.

Tenancy from Year to Year

Where property was hired for meat

business under section 42-203 the tenancy was initially for a year with implied renewal for one year resulting in a tenancy from year to year. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 90.

42-206. (7746) Notice to quit.

Time for Giving Notice

An action in unlawful detainer cannot be maintained under section 93-9703 if the tenant is lawfully in possession under a tenancy from year to year without first

giving notice thirty days prior to the anniversary date of the tenancy. *Roseneau Foods, Inc. v. Coleman*, 140 M 572, 374 P 2d 87, 91.

TITLE 43—LEGISLATURE AND ENACTMENT OF LAWS

- Chapter 1. Senatorial representative and congressional districts, 43-106.1, 43-106.2, 43-107.
2. The legislative assembly—its composition, organization, officers and employees, 43-206.1 to 43-208, 43-215 to 43-218.
3. The powers, duties and compensation of members, officers and employees of the legislative assembly, 43-310.
8. Lobbying, 43-803.
9. Legislative proceedings—dissemination, 43-902.
10. Fiscal notes in legislative bills, 43-1001 to 43-1006.
11. Legislative fiscal review committee, 43-1101 to 43-1108.

CHAPTER 1—SENATORIAL, REPRESENTATIVE AND CONGRESSIONAL DISTRICTS

- Section 43-106.1. Number of senators—senatorial districts and apportionment.
- 43-106.2. Number of representatives—representative districts and apportionment.
- 43-107. Congressional districts.

43-101 to 43-106. (42 to 47) Repealed.

Repeal

These sections (Secs. 110 to 112, Pol. C. 1895; Sec. 2, Ch. 38, L. 1911; Sec. 1, Ch. 6, L. 1921; Sec. 2, Ch. 192, L. 1921; Sec. 1, Ch. 144, L. 1939; Secs. 1 to 4, Ch. 37, L. 1941; Secs. 1, 2, Ch. 191, L. 1951; Secs. 1, 2, Ch. 233, L. 1961), relating to apportionment of legislative representation, were repealed by Sec. 13, Ch. 194, Laws 1967.

43-106.1. Number of senators—senatorial districts and apportionment.

The senate of the legislative assembly shall consist of fifty-five (55) members. The senatorial districts and the number of senators elected from each district are as follows:

Senatorial District Number	Number of Senators	District Consists of County or Counties
1	1	Carter, Fallon, Wibaux, Prairie
2	1	Dawson
3	1	Richland and McCone
4	1	Roosevelt
5	2	Valley, Daniels, Sheridan
6	1	Rosebud, Treasure, Garfield, Petroleum
7	1	Custer
8	1	Big Horn, Powder River
9	6	Yellowstone
10	1	Phillips, Blaine
11	1	Fergus
12	1	Musselshell, Golden Valley, Wheatland, Sweetgrass
13	1	Carbon, Stillwater
14	1	Park
15	2	Gallatin

Senatorial District Number	Number of Senators	District Consists of County or Counties
16	1	Jefferson, Broadwater, Meagher
17	1	Chouteau, Judith Basin
18	6	Cascade
19	2	Hill, Liberty
20	2	Toole, Pondera, Teton
21	2	Lewis and Clark
22	2	Deer Lodge, Powell, Granite
23	4	Silver Bow
24	1	Beaverhead, Madison
25	1	Ravalli
26	4	Missoula
27	1	Sanders, Mineral
28	1	Lake
29	1	Glacier
30	3	Flathead
31	1	Lincoln

History: En. Sec. 1, Ch. 194, L. 1967.

Title of Act

An act apportioning the legislative assembly; providing for filling of vacancies in the legislative assembly; and amending sections 23-803, 23-910, 23-921, 23-1109,

23-1111, 23-1807, 23-1812, 23-1904, 23-2402 and 23-2403, R. C. M. 1947; and repealing sections 16-508, 16-518, 23-1108, 23-1809, 23-1810, 23-1812, 43-101, 43-102, 43-103, 43-104, 43-105, 43-106, 43-203 and 43-204, R. C. M. 1947.

DECISIONS UNDER FORMER LAW

Unconstitutionality

Former sections 43-101 to 43-105 were unconstitutional in that they violated the Equal Protection Clause of the Fourteenth

Amendment to the United States Constitution. Herweg v. Thirty-Ninth Legislative Assembly of State of Montana, 246 F Supp 454.

43-106.2. Number of representatives—representative districts and apportionment. The house of representatives of the legislative assembly shall consist of one hundred and four (104) members. The representative districts and the number of representatives elected from each district are as follows:

Representative District Number	Number of Representatives	District Consists of County or Counties
1	2	Carter, Fallon, Wibaux and Prairie
2	2	Dawson
3	2	Richland and McCone
4	2	Roosevelt
5A	1	Sheridan
5B	3	Valley, Daniels
6	2	Rosebud, Treasure, Garfield and Petroleum
7	2	Custer

Representative District Number	Number of Representatives	District Consists of County or Counties
8	2	Big Horn and Powder River
9	12	Yellowstone
10A	1	Phillips
10B	1	Blaine
11	2	Fergus
12A	1	Musselshell and Golden Valley
12B	1	Wheatland and Sweet Grass
13	2	Carbon and Stillwater
14	2	Park
15	4	Gallatin
16	2	Jefferson, Broadwater and Meagher
17	2	Chouteau and Judith Basin
18	11	Cascade
19	3	Hill and Liberty
20A	1	Toole
20B	1	Pondera
20C	1	Teton
21	4	Lewis and Clark
22A	1	Powell
22B	3	Deer Lodge and Granite
23	7	Silver Bow
24A	1	Beaverhead
24B	1	Madison
25	2	Ravalli
26	7	Missoula
27	2	Sanders and Mineral
28	2	Lake
29	2	Glacier
30	5	Flathead
31	2	Lincoln

History: En. Sec. 2, Ch. 194, L. 1967.

Repealing Clause

Section 13 of Ch. 194, Laws 1967 read
 "Sections 16-508, 16-518, 23-1108, 23-
 1809, 23-1810, 23-1811, 43-101, 43-102, 43-
 103, 43-104, 43-105, 43-106, 43-203, and
 43-204, R. C. M. 1947 are repealed."

43-107. (48) Congressional districts. The counties of Beaverhead, Broadwater, Deer Lodge, Flathead, Gallatin, Granite, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Mineral, Missoula, Powell, Ravalli, Sanders, Silver Bow, Glacier, Toole, Liberty, Pondera, Teton, Meagher, and Park shall constitute the first congressional district of the state. The counties of Big Horn, Blaine, Carbon, Carter, Cascade, Chouteau, Custer, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Rosebud, Roosevelt, Sheridan, Stillwater, Sweet Grass, Treasure,

Valley, Wheatland, Wibaux and Yellowstone shall constitute the second congressional district of the state.

Whenever any county is created, comprised partly of the territory of both such districts, said county shall belong to and become a part of the district to which major portion of the territory of said county belonged and was a part prior to the creation of such new county.

History: Ap. p. Sec. 120, Pol. C. 1895; re-en. Sec. 47, Rev. C. 1907; amd. Sec. 1, Ch. 44, L. 1917; re-en. Sec. 48, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1945; amd. Sec. 1, Ch. 124, L. 1967.

Amendments

The 1967 amendment deleted preliminary and generalized descriptions of the districts; and transferred Glacier, Toole, Liberty, Pondera, Teton, Meagher and Park counties from the second congressional district to the first congressional district.

DECISIONS UNDER FORMER LAW

Unconstitutionality

Section 43-107, prior to the 1967 amendment, was unconstitutional in that it violated the Equal Protection Clause

of the Fourteenth Amendment of the United States Constitution. *Herweg v. Thirty-Ninth Legislative Assembly of State of Montana*, 246 F Supp 454.

CHAPTER 2—THE LEGISLATIVE ASSEMBLY—ITS COMPOSITION, ORGANIZATION, OFFICERS AND EMPLOYEES

Section 43-206.1. Rosters prepared from election records.

43-207. Senate, organization of.

43-208. House of representatives, organization of.

43-215. Filling vacancies in legislative assembly—appointment by board of county commissioners—calling of board meeting.

43-216. Alternate method of selection—failure of one candidate to receive majority vote.

43-217. "Vacancy" defined.

43-218. Pre-session caucus—house appropriations and senate finance and claims committee member—per diem and expenses.

43-203, 43-204. (53, 54) Repealed.

Repeal

These sections (Secs. 153, 154, Pol. C. 1895), relating to the election of senators,

were repealed by Sec. 13, Ch. 194, Laws 1967.

43-206. (56) Repealed.

Repeal

Section 43-206 (Sec. 1, p. 89, L. 1885; Sec. 161, Pol. C. 1895), making certificate

of election prima facie evidence of right to seat, was repealed by Sec. 4, Ch. 18, Laws 1969.

43-206.1. Rosters prepared from election records. The secretary of state shall prepare certified rosters from the official election records on file in his office for use in the organization of the senate and house of representatives.

History: En. Sec. 1, Ch. 18, L. 1969.

Title of Act

An act to provide that the secretary of state shall prepare a certified roster to be

used in the organization of both houses of the legislature; amending sections 43-207 and 43-208, R. C. M. 1947, and repealing section 43-206, R. C. M. 1947.

43-207. (57) Senate, organization of. At the hour of twelve o'clock, noon, on the day appointed for the meeting of any regular session of the

legislative assembly, the president of the senate, or in case of his absence or inability, then the senior member present, must take the chair, call the senators and senators-elect to order, call over the senators from the certified roster prepared by the secretary of state, and then, from the certified roster prepared by the secretary of state, call over the senatorial districts and counties, in their order, from which members have been elected at the preceding election, and after the same are called the members-elect must take the constitutional oath of office and assume their seats. The senate may thereupon, if a quorum is present, proceed to elect its officers.

History: En. H. B. No. 69, p. 103, L. 1897; re-en. Sec. 163, Pol. C. 1895; re-en. Sec. 57, Rev. C. 1907; re-en. Sec. 57, R. C. M. 1921; amd. Sec. 2, Ch. 18, L. 1969. Cal. Pol. C. Sec. 238.

Amendments

The 1969 amendment inserted "call over

" * * * secretary of state" after "to order," substituted "from the certified * * * and counties" for "call over the senatorial districts" after "and then," substituted "after the same are called" for "as the same are called," before "the members-elect," and deleted "present their certificates" before "take the constitutional oath of office."

43-208. (58) House of representatives, organization of. At the time specified in section 43-207, the secretary of state, or in case of his absence or inability, then the senior member-elect present, must take the chair, call the members-elect of the house of representatives to order, and then, from the certified roster prepared by the secretary of state, call over the roll of counties and districts; and after the same are called the members-elect must take the constitutional oath of office and assume their seats. The house of representatives may thereupon, if a quorum is present, proceed to elect its officers.

History: En. Sec. 164, Pol. C. 1895; re-en. Sec. 58, Rev. C. 1907; re-en. Sec. 58, R. C. M. 1921; amd. Sec. 3, Ch. 18, L. 1969. Cal. Pol. C. Sec. 239.

Amendments

The 1969 amendment inserted "from the certified * * * secretary of state" after "and then," substituted "after the same"

for "as the same" before "are called," and deleted "present their certificates" before "take the constitutional oath of office."

Repealing Clause

Section 4 of Ch. 18, Laws 1969 read "Section 43-206, R. C. M. 1947, is repealed."

43-211 to 43-214. (61 to 64) Repealed.

Repeal

These sections (Sec. 9, p. 90, L. 1885; Secs. 1 to 3, p. 170, L. 1891; Secs. 1, 2, Ch. 1, L. 1915; Sec. 1, Ch. 44, L. 1937; Sec. 1, Ch. 50, L. 1937; Sec. 1, Ch. 23, L. 1939;

Sec. 1, Ch. 1 and Sec. 1, Ch. 3, L. 1943), relating to officers and employees of the legislative assembly and providing for compelling attendance of legislators, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-215. Filling vacancies in legislative assembly—appointment by board of county commissioners—calling of board meeting. When a vacancy occurs, in either house of the legislative assembly, the vacancy shall be filled by appointment by the board of county commissioners, or, in the event of a multicounty district, the boards of county commissioners comprising the district sitting as one appointing board. The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislative assembly, and he shall act as the presiding officer of the meeting.

History: En. Sec. 1, Ch. 179, L. 1967.

Title of Act

An act to provide that vacancies in either house of the legislative assembly shall be filled by the board or boards of county commissioners of the county or counties concerned.

Preamble

Chapter 179, Laws 1967, contained a preamble reading: "Whereas, section 45, Article V of the Montana Constitution, which provides for the filling of vacancies in the legislative assembly has been repealed by an amendment to the Montana Constitution adopted by the electorate at the November 8, 1966 general election."

43-216. Alternate method of selection—failure of one candidate to receive majority vote. In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from a number of candidates, not exceeding the number of counties comprising the district, in accordance with rules of selection adopted by the appointing board.

History: En. Sec. 2, Ch. 179, L. 1967.

43-217. "Vacancy" defined. For the purposes of this act, "vacancy" or "vacancies" has the same meaning as prescribed in section 59-602, R.C.M. 1947.

History: En. Sec. 3, Ch. 179, L. 1967.

43-218. Pre-session caucus—house appropriation and senate finance and claims committee member—per diem and expenses. As soon after the official canvass as possible, but not later than December 1 of each year following an election when members of the legislative assembly are elected, the majority and minority parties of each house of the legislative assembly shall hold a pre-session caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to elect officers, appoint committees and hire any necessary employees. Members of the house appropriations committee and the senate finance and claims committee named at the caucus shall begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests. Members of these committees, except senators elected at the general election held in 1968, shall receive twenty dollars (\$20) per day for each day engaged in committee business, and all members of these committees shall be reimbursed for actual and necessary expenses incurred in their duties. Per diem and expenses shall be paid by the state controller from the appropriation for operation of the preceding legislative assembly.

History: En. Sec. 2, Ch. 274, L. 1969.

Compiler's Notes

Section 23-1814, referred to as amended in the Title of Chapter 274, Laws 1969, was repealed by Sec. 248, Ch. 368, Laws 1969 and no specific amendment of the section appeared in the text of the former Act.

Title of Act

An act to fix the mileage paid legislators traveling to and from sessions and

provide that holdover senators, senators-elect, and representatives-elect of the majority and minority parties shall receive mileage for travel to and from the pre-session caucuses; to provide for a pre-session caucus; to provide that members appointed at the caucus to the house appropriations and the senate finance and claims committee shall begin reviewing money requests immediately; to provide that members of these committees, except senators elected at the general election held in 1968, shall receive \$20 per diem for

each day engaged in committee business; and all members of these committees shall be reimbursed for actual and necessary expenses incurred in their duties, all per diem and expense payments to be paid by the state controller from the appropriation

for operation of the preceding legislative assembly; and to change the state canvass date to permit a caucus December 1 or earlier; amending sections 23-1814 and 43-310, R. C. M. 1947.

CHAPTER 3—THE POWERS, DUTIES AND COMPENSATION OF MEMBERS, OFFICERS AND EMPLOYEES OF THE LEGISLATIVE ASSEMBLY

Section 43-310. Per diem, mileage and expenses of members.

43-302, 43-303. (66, 67) Repealed.

Repeal

These sections (Secs. 201, 202, Pol. C. 1895), relating to the secretary of the

senate, the clerk of the house, and their assistants, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-305 to 43-309. (69 to 73) Repealed.

Repeal

These sections (Sec. 6, p. 171, L. 1891; Secs. 204 to 207, 209, Pol. C. 1895; Sec. 3, Ch. 1, L. 1915; Sec. 1, Ch. 210, L. 1943), relating to the sergeants-at-arms, the en-

grossing clerks and enrolling clerks, and other officers and employees of the legislative assembly, were repealed by Sec. 4, Ch. 1, Laws 1965.

43-310. (74) Per diem, mileage and expenses of members. (1) Holdover members of the legislative assembly and members hereafter elected shall receive twenty dollars (\$20.00) per day, payable weekly, during the session of the legislative assembly, and nine cents (9¢) per mile for each mile of travel to and from their residences and the place of holding the session, by the nearest traveled route.

(2) Members shall also receive fifteen dollars (\$15.00) per day, payable weekly during the session of the legislative assembly, as reimbursement for expenses incurred in attending the session.

(3) The majority and minority parties in each house shall hold pre-session caucuses for the purpose of preliminary organization of the respective houses. Holdover senators, senators-elect, and representatives-elect shall receive mileage at the rate of nine cents (9¢) per mile for each mile of travel to and from their residences and the place or places of holding the pre-session caucuses.

History: En. Sec. 220, Pol. C. 1895; re-en. Sec. 77, Rev. C. 1907; amd. Sec. 1, Ch. 45, L. 1909; re-en. Sec. 74, R. C. M. 1921; amd. Sec. 1, Ch. 23, L. 1955; amd. Sec. 1, Ch. 32, L. 1963; amd. Sec. 1, Ch. 180, L. 1965; amd. Sec. 1, Ch. 274, L. 1969. Cal. Pol. C. Sec. 266.

Amendments

The 1963 amendment increased the mile-

age allowance from seven to eight cents per mile.

The 1965 amendment designated the former section as subsection (1) and added subsection (2).

The 1969 amendment made subsection (1) provisions applicable to holdover members of the legislature and increased mileage allowance from eight to nine cents per mile, and added subsection (3).

43-312 to 43-317. (76 to 78.3) Repealed.

Repeal

These sections (Secs. 222, 223, Pol. C. 1895; Sec. 3, Ch. 45, L. 1909; Sec. 1, Ch.

37, L. 1913; Secs. 4, 5, Ch. 1, L. 1915; Sec. 1, Ch. 115, L. 1917; Secs. 1 to 3, Ch. 112, L. 1927; Sec. 1, Ch. 6, L. 1935; Sec.

2, Ch. 50, L. 1937; Sec. 2, Ch. 1 and Sec. 2, Ch. 3, L. 1943), relating to the compensation of legislative officers and employees

and to property of the legislative assembly, were repealed by Sec. 4, Ch. 1, Laws 1965.

CHAPTER 8—LOBBYING

Section 43-803. Licensing of lobbyists—fee—expiration, suspension or revocation—reinstatement.

43-803. Licensing of lobbyists—fee—expiration, suspension or revocation—reinstatement. (1) Licenses—fees—eligibility. Any person of adult age and good moral character who is a citizen of the United States and otherwise qualified under this act may be licensed as a lobbyist as herein provided. The secretary of state shall provide for the form of application for license. Such application may be obtained in the office of the secretary of state and filed therein. Upon approval of such application and payment of the license fee of ten dollars (\$10.00) to the secretary of state, a license shall be issued which shall entitle the licensee to practice lobbying on behalf of any one or more principals. Each license shall expire on December 31 of each odd-numbered year. No application shall be disapproved without affording the applicant a hearing which shall be held and decision entered within ten (10) days, of the date of filing of the application. The license fees collected by the secretary of state under this act shall be deposited by him in the state treasury.

(2) Suspension or revocation of license. Upon verified complaint in writing to the attorney general of the state of Montana charging the holder of a license with having been guilty of unprofessional conduct or with having procured his license by fraud or perjury or through error, the attorney general is hereby authorized to bring civil action in the district court for Lewis and Clark county, state of Montana, against the holder and in the name of the state as plaintiff to revoke the license. Hearing shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible and at least twenty (20) days after the filing of the charges and shall take precedence over all other matters pending before the court. If the court finds for the plaintiff judgment shall be rendered revoking the license, and the clerk of the court shall file a certified copy of the judgment with the secretary of state. The licensing authority may commence any such action on his own motion.

(3). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 157, L. 1959; amd. Sec. 3, Ch. 248, L. 1965.

Amendment

The 1965 amendment deleted "in a special fund to be known as the 'Lobby Li-

cense Fund' which fund is to be expended in the manner hereinafter provided" at the end of subsection (1); and deleted from subsection (2) a former fifth sentence which read: "Costs shall be paid from the 'Lobby License Fund'."

CHAPTER 9—LEGISLATIVE PROCEEDINGS—DISSEMINATION

Section 43-902. Schedule of fees.

43-902. Schedule of fees. (a). * * * [Same as parent volume.]

(b) In addition to the fee for each complete set of the proceedings specified by subsection (a) of this section, any person who requests

that a set of the proceedings be mailed shall pay an additional fee to the secretary of state for each complete set that is mailed of seventy-five dollars (\$75) if a person requests that the proceedings be mailed ordinary mail and one hundred dollars (\$100) if a person requests that the proceedings be mailed air mail.

(c) Any person desiring to receive single copies of mimeographed bills, mimeographed resolutions, printed bills, printed resolutions, or amendments thereto shall pay to the clerk of the house of representatives or the secretary of the senate twenty-five cents (\$.25) per single copy.

(d) Any person desiring to receive single copies of status sheets or status of proceedings shall first pay to the clerk of the house of representatives or the secretary of the senate ten cents (10¢) per single copy.

(e) The chief clerk of the house of representatives and the secretary of the senate shall be responsible for accounting for all moneys received by them and shall transmit such funds received to the secretary of state before 5 p.m. each weekday. Any moneys received by them during Saturday, Sunday or evening sessions of the legislative assembly shall be held by them in a safe place and transmitted to the secretary of state upon the next business day.

(f) The secretary of state shall account for all funds collected under this act and transmit such funds to the treasurer of the state of Montana, who shall credit them to the general fund.

History: En. Sec. 2, Ch. 223, L. 1959; amd. Sec. 1, Ch. 14, L. 1967; amd. Sec. 1, Ch. 5, L. 1969.

and, in subsection (c), deleted references to "mimeographed memorials" and "printed memorials."

Amendments

The 1967 amendment added a new subsection (b) and designated former subsections (b) through (e) as present subsections (c) through (f).

The 1969 amendment, in subsection (b), substituted "seventy-five dollars (\$75)" for "fifty dollars (\$50)," "ordinary" for "first class" before "mail," and "one hundred dollars (\$100)" for "eighty dollars (\$80)";

Effective Dates

Section 2 of Ch. 14, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 2, 1967.

Section 2 of Ch. 5, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

CHAPTER 10—FISCAL NOTES IN LEGISLATIVE BILLS

- Section 43-1001. Committee reports to include fiscal notes—need determined on introduction of bill.
- 43-1002. Budget director to prepare note.
- 43-1003. Note referred to committee—distribution to legislators on report of bill.
- 43-1004. Contents of fiscal notes.
- 43-1005. Note requested by committee or house.
- 43-1006. Background information available to legislators.

43-1001. Committee reports to include fiscal notes—need determined on introduction of bill. All bills reported out of a committee of the legislative assembly having an effect on the revenues, expenditures or fiscal liability of the state, except appropriation measures carrying specific

dollar amounts, shall include a fiscal note incorporating an estimate of such effect. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction.

History: En. Sec. 1, Ch. 53, L. 1965.

Title of Act

An act requiring the inclusion of a fiscal

note in all bills having an effect on the revenues, expenditures or fiscal liability of the state.

43-1002. Budget director to prepare note. The state budget director, in co-operation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return same within six (6) days.

History: En. Sec. 2, Ch. 53, L. 1965.

43-1003. Note referred to committee—distribution to legislators on report of bill. A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. If the bill is printed, the note shall be mimeographed and placed on the members' desks.

History: En. Sec. 3, Ch. 53, L. 1965.

43-1004. Contents of fiscal notes. Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

History: En. Sec. 4, Ch. 53, L. 1965.

43-1005. Note requested by committee or house. A fiscal note also may be requested on a bill by:

- (1) A committee considering the bill, or
- (2) A majority of the members of the house in which the bill is to be considered, at the time of second reading; providing, however, section 5 [this section] of this act shall not apply six (6) days before the close of transmittal of bills and/or shall not apply after the fifty-fourth day.

History: En. Sec. 5, Ch. 53, L. 1965.

43-1006. Background information available to legislators. The budget director shall make available on request to any member of the legislative assembly all background information used in developing a fiscal note.

History: En. Sec. 6, Ch. 53, L. 1965.

CHAPTER 11—LEGISLATIVE FISCAL REVIEW COMMITTEE

- Section 43-1101. Creation of committee—composition—appointments—vacancies.
 43-1102. Duties of committee.
 43-1103. Powers of committee.
 43-1104. Investigation of costs of state government.
 43-1105. Subpoena and related powers—contempt proceedings.
 43-1106. Reimbursement for expenses—per diem.
 43-1107. Officers—rules of procedure—meetings—records.
 43-1108. Fiscal analyst and other necessary staff.

43-1101. Creation of committee—composition—appointments—vacancies. There is hereby created a legislative fiscal review committee which shall consist of four (4) members of the house of representatives appointed by the speaker, no more than two (2) of whom shall be of the same political party; and four (4) members of the senate appointed by the committee on committees, no more than two (2) of whom shall be of the same political party. The first members of the legislative fiscal review committee shall be appointed not later than the sixtieth (60th) legislative day of the forty-first (41st) legislative session. New members of the committee shall be appointed not later than the sixtieth (60th) legislative day of each succeeding session. Any vacancy occurring when the legislative assembly is not in session shall be filled by the selection of another member of the legislature by the remaining members of the committee.

History: En. Sec. 1, Ch. 376, L. 1969.

Title of Act

An act to create a legislative fiscal re-

view committee for the study of state government fiscal matters; specifying an immediate effective date.

43-1102. Duties of committee. The legislative fiscal review committee shall accumulate, compile, analyze, and furnish such information bearing upon the financial matters of the state as the legislative assembly, or the committee by its own initiative, shall determine relevant to issues of policy and questions of state-wide importance, including, but not limited to, investigation and study of the possibilities of effecting economy and efficiency in state government. The committee may also conduct studies inquiring into the financial administration of state government and any of its agencies, including problems of assessment and collection of taxes, and all other matters pertaining to the fiscal functions of all agencies and branches of state government.

History: En. Sec. 2, Ch. 376, L. 1969.

43-1103. Powers of committee. The legislative fiscal review committee may:

(1) Employ the services of any research agency deemed necessary to the discharge of the committee's duties;

(2) Appoint special subcommittees composed of legislators, private citizens, or both to study and inquire into any specific governmental problems, however, the work of subcommittees shall be performed under the supervision of the committee;

(3) Estimate revenue from existing and proposed taxes;

(4) Review the executive budget and budget requests of each state agency and institution including proposals for the construction of capital improvements;

(5) Make recommendations it deems desirable to the legislative assembly;

(6) Assist committees of the legislative assembly, and individual legislators, in compiling and analyzing financial information.

History: En. Sec. 3, Ch. 376, L. 1969.

43-1104. Investigation of costs of state government. The legislative fiscal review committee has authority to investigate and examine into the costs of state government activities and may examine all records, books, and files of any department, agency, commission, board, or institution of the state of Montana.

History: En. Sec. 4, Ch. 376, L. 1969.

43-1105. Subpoena and related powers—contempt proceedings. In the discharge of its duties, the legislative fiscal review committee shall have authority to hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses, and the production of any papers, books, accounts, documents and testimony, and to cause depositions of witnesses to be taken in the manner prescribed by law in civil actions in the district court. In case of disobedience on the part of any person to comply with a subpoena issued on behalf of the committee, or of the refusal of any witness to testify on any matter regarding which he may be lawfully interrogated, it shall be the duty of the district court of any county or the judge thereof, on application of the legislative fiscal review committee, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court on a refusal to testify therein.

History: En. Sec. 5, Ch. 376, L. 1969.

43-1106. Reimbursement for expenses—per diem. Members of the legislative fiscal review committee and its subcommittees shall be reimbursed for actual travel and other expenses incurred in the discharge of their duties, and may also receive per diem payments as authorized by law.

History: En. Sec. 6, Ch. 376, L. 1969.

43-1107. Officers—rules of procedure—meetings—records. The legislative fiscal review committee shall organize within thirty (30) days after the passage and approval of this act by electing one (1) of its members as chairman and by the election of other officers from the membership of the committee as it may deem desirable. The committee is empowered to adopt rules of procedure and to make all arrangements for its meetings to carry out the purposes for which it is created. The committee shall keep an accurate record of its activities and proceedings.

History: En. Sec. 7, Ch. 376, L. 1969.

43-1108. Fiscal analyst and other necessary staff. A fiscal analyst and other necessary staff shall be assigned to the committee by the legislative council. The council shall fix the salaries and define the duties of all the staff personnel.

History: En. Sec. 8, Ch. 376, L. 1969.

Effective Date

Section 9 of Ch. 376, Laws 1969 pro-

vided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

TITLE 44—LIBRARIES

- Chapter 1. The state library of Montana, 44-127, 44-131 to 44-139.
2. County and regional free libraries, 44-213, 44-214, 44-218 to 44-228.
3. City free public libraries, Repealed—Section 12, Chapter 260, Laws of 1967.
4. State law library, 44-403, 44-404, 44-410, 44-412.
5. Historical society—library and museum, 44-516 to 44-529.
6. Interstate library compact, 44-601, 44-602.

CHAPTER 1—THE STATE LIBRARY OF MONTANA

- Section 44-127. State library commission created.
44-131. Powers of state library commission.
44-132. Definitions.
44-133. Creation of distribution center—state library commission to make regulations.
44-134. Depositing of state agency publications—additional copies—inter-library loan—sale publications.
44-135. Depository contracts—eligibility requirements—standards.
44-136. List of available publications.
44-137. State agency lists of current publications.
44-138. Restriction on general public distribution.
44-139. Exempt state agencies and officers.

44-127. (1575.1) State library commission created. A commission is hereby created to be known as the state library commission. This commission shall consist of the librarian of the state university, the state superintendent of public instruction, ex officio member, and the three members to be appointed by the governor, who shall serve one, two and three years respectively. As these terms expire, annually thereafter one person shall be appointed, for a term of three years. The commission shall annually elect a chairman from its membership. The members of said commission shall receive no compensation for their services except their actual and necessary expenses.

History: En. Sec. 1, Ch. 184, L. 1929; amd. Sec. 1, Ch. 91, L. 1945; amd. Sec. 1; Ch. 55, L. 1961; amd. Sec. 1, Ch. 215, L. 1965.

Amendment

The 1965 amendment deleted "as chairman" after "librarian of the state university" in the second sentence; and inserted the fourth sentence.

44-129, 44-130. (1575.3, 1575.4) Repealed.

Repeal

These sections (Secs. 3, 4, Ch. 91, L. 1945; Sec. 3, Ch. 55, L. 1961), relating to

powers and duties of the state library commission, were repealed by Sec. 3, Ch. 215, Laws 1965.

44-131. Powers of state library commission. The state library commission shall have the power: (1) To give assistance and advice to all tax-supported or public libraries in the state and to all counties, cities, towns or regions in the state which may propose to establish libraries, as to the best means of establishing and improving such libraries;

(2) To maintain and operate the state library and make provision for its housing;

(3) To accept and to expend in accordance with the terms thereof any grant of federal funds which may become available to the state for library purposes;

(4) To make rules and regulations and establish standards for the administration of the state library, and for the control, distribution and lending of books and materials;

(5) To serve as the agency of the state to accept and administer any state, federal or private funds or property appropriated for or granted to it for library service or to foster libraries in the state and to establish regulations under which funds shall be dispersed;

(6) To provide library services for the blind;

(7) To furnish, by contract or otherwise, library assistance and information services to state officials, state departments and residents of those parts of the state inadequately serviced by libraries;

(8) To act as a state board of professional standards and library examiners and develop standards for public libraries and adopt rules and regulations for the certification of librarians.

History: En. Sec. 2, Ch. 215, L. 1965.

Repealing Clause

Title of Act

An act amending section 44-127, R. C. M. 1947, defining the powers and duties of the state library commission; and repealing sections 44-129 and 44-130, R. C. M. 1947.

Section 3 of Ch. 215, Laws 1965 read "Sections 44-129 and 44-130, R. C. M. 1947, are repealed."

44-132. Definitions. As used in this act:

(1) "Print" includes all forms of printing and duplicating, regardless of format or purpose, with the exception of correspondence and interoffice memoranda.

(2) "State publication" includes any document, compilation, journal, law, resolution, bluebook, statute, code, register, pamphlet, list, book, proceedings, report, memorandum, hearing, legislative bill, leaflet, order, regulation, directory, periodical or magazine issued in print, or purchased for distribution, by the state, the legislature, constitutional officers, any state department, committee or other state agency supported wholly or in part by state funds.

(3) "State agency" includes every state office, officer, department, division, bureau, board, commission and agency of the state, and, where applicable, all subdivisions of each.

History: En. Sec. 1, Ch. 261, L. 1967.

Title of Act

An act to create a state publications library distribution center as a division

of the state library and amending section 82-1916, R. C. M. 1947, relating to printing and distribution of state reports and providing for reimbursement for additional publications.

44-133. Creation of distribution center—state library commission to make regulations. There is hereby created as a division of the state library, and under the direction of the state librarian, a state publications library distribution center. The center shall promote the establishment

of an orderly depository library system. To this end the state library commission shall make such rules and regulations necessary to carry out the provisions of this act.

History: En. Sec. 2, Ch. 261, L. 1967.

44-134. Depositing of state agency publications—additional copies—inter-library loan—sale publications. Every state agency shall upon release deposit at least four copies of each of its state publications with the state library for record and depository purposes. Additional copies shall also be deposited, in quantities certified to the agencies by the state library as required to meet the needs of the depository library system and to provide inter-library loan service to those libraries without depository status. Additional copies of sale publications required by the state library shall be furnished only upon reimbursement to the state agency of the full cost of such sale publications, and the state library shall also reimburse any state agency for additional publications so required, where the quantity desired will necessitate additional printing or other expense to such agency.

History: En. Sec. 3, Ch. 261, L. 1967.

Cross-Reference

Printing and publications of state agencies and offices, sec. 82-1916.

44-135. Depository contracts — eligibility requirements — standards. The center shall enter into depository contracts with any municipal or county free library, state college or state university library, the library of congress and the midwest inter-library center, and other state libraries. The requirements for eligibility to contract as a depository library shall be established by the state library commission upon recommendations of the state librarian. The standards shall include and take into consideration the type of library, ability to preserve such publications and to make them available for public use, and also such geographical locations as will make the publications conveniently accessible to residents in all areas of the state.

History: En. Sec. 4, Ch. 261, L. 1967.

44-136. List of available publications. The center shall publish and distribute regularly to contracting depository libraries and other libraries upon request a list of available state publications.

History: En. Sec. 5, Ch. 261, L. 1967.

44-137. State agency lists of current publications. Upon request by the center, issuing state agencies shall furnish the center with a complete list of its current state publications and a copy of its mailing and/or exchange lists.

History: En. Sec. 6, Ch. 261, L. 1967.

44-138. Restriction on general public distribution. The center shall not engage in general public distribution of either state publications or lists of publications.

History: En. Sec. 7, Ch. 261, L. 1967.

44-139. **Exempt state agencies and officers.** This act shall not apply to nor affect the duties concerning publications distributed by, or officers of:

- (1) The state law library;
- (2) The secretary of state in connection with his duties under sections 12-317, 82-2202 (17) and 82-2203, R.C.M. 1947.

History: En. Sec. 8, Ch. 261, L. 1967.

CHAPTER 2—COUNTY, CITY AND REGIONAL FREE LIBRARIES

- Section 44-213. Participation of other governmental units.
 44-214. Board of trustees—appointment and term.
 44-218. Purpose of act in regard to free public libraries.
 44-219. Establishing public library—resolution—petition—election.
 44-220. Levying of tax—special library fund—payments upon order or warrant.
 44-221. Board of trustees—appointment—composition of board—tenure.
 44-222. Board of trustees—powers and duties.
 44-223. Board of trustees—chief librarian—personnel—compensation.
 44-224. Free use of library—exclusions—extending privileges.
 44-225. Providing library services—co-operation and merging of boards, institutions and agencies.
 44-226. Cities or towns with existing tax-supported libraries—notification—exemption from county taxes.
 44-227. "City" defined.
 44-228. Continued existence of all public libraries.

44-201 to 44-210. (4563 to 4572) Repealed.

Repeal

These sections (Secs. 1 to 10, Ch. 45, L. 1915; Secs. 1 to 4, Ch. 137, L. 1917; Sec. 1, Ch. 56, L. 1923; Secs. 1 to 3, Ch. 202,

L. 1943; Sec. 1, Ch. 14, L. 1949), relating to county and regional free libraries were repealed by Sec. 12, Ch. 260, Laws 1967.

44-213. **Participation of other governmental units.** When a joint county or regional library shall have been established, the legislative body of any government unit therein that is maintaining a library may decide, with the concurrence of the board of trustees of its library, to participate in the joint county or regional library; after which, beginning with the next fiscal year of the county, the governmental unit shall participate in the joint county or regional library and its residents shall be entitled to the benefits of the joint county or regional library, and property within its boundaries shall be subject to taxation for joint county or regional library purposes. A governmental unit participating in the joint county or regional library may retain title to its own property, continue its own board of library trustees, and may levy its own taxes for library purposes; or, by a majority vote of the qualified electors, a governmental unit may transfer, conditionally or otherwise, the ownership and control of its library, with all or any part of its property, to another governmental unit which is providing or will provide free library service in the territory of the former, and the trustees or body making the transfer shall thereafter be relieved of responsibility pertaining to the property transferred. The state board of education may contract with the government of any city or county, or the governments of both the city and the county, in which a unit of the university of Montana is located for the establishment and op-

eration of joint library facilities. Any such contract which proposes the erection of a building shall be subject to the approval of the legislature. Any joint library facilities established pursuant to this section shall be operated and supported as provided in such contract and under this chapter.

History: En. Sec. 2, Ch. 132, L. 1939; amd. Sec. 1, Ch. 249, L. 1963.

Amendment

The 1963 amendment added the third, fourth, and fifth sentences.

Effective Date

Section 2 of Ch. 249, Laws 1963 pro-

vided the act should be in effect from and after its passage and approval. Approved March 11, 1963.

Cross-Reference

Building specifications for accommodation of handicapped persons, secs. 69-3701 to 69-3719.

44-214. Board of trustees—appointment and term. In a joint county or regional library district the board of five trustees shall be appointed by the joint action of all the county commissioners in the district. The first appointments or elections shall be for terms of one (1), two (2), three (3), four (4), and five (5) years respectively, and thereafter a trustee shall be appointed or elected annually to serve for five (5) years. Vacancies shall be filled for unexpired terms as soon as possible in the manner in which members of the board are regularly chosen. A trustee shall not receive a salary or other compensation for services as trustee, but necessary expenses actually incurred shall be paid from the library fund. A library trustee may be removed only by vote of the legislative body. Trustees shall serve no more than two full terms in succession.

History: En. Sec. 3, Ch. 132, L. 1939; amd. Sec. 10, Ch. 260, L. 1967.

Amendments

The 1967 amendment added the last sentence.

44-216, 44-217. Repealed.

Repeal

These sections (Secs. 5, 6, Ch. 132, L. 1939), relating to tax levies and librarians

for joint county or regional libraries, were repealed by Sec. 12, Ch. 260, Laws 1967.

44-218. Purpose of act in regard to free public libraries. It is the purpose of this act to encourage the establishment, adequate financing, and effective administration of free public libraries in this state to give the people of Montana the fullest opportunity to enrich and inform themselves through reading.

History: En. Sec. 1, Ch. 260, L. 1967.

Title of Act

An act providing for the creation, maintenance and operation of public libraries in counties and cities and re-

pealing sections 44-201, 44-202, 44-203, 44-204, 44-205, 44-206, 44-207, 44-208, 44-209, 44-210, 44-216, 44-217, 44-301, 44-302, 44-303 and 11-704, R. C. M. 1947; amending section 44-214, R. C. M., 1947.

44-219. Establishing public library — resolution — petition — election. A public library may be established in any county or city in any of the following ways:

(1) The governing body of any county or city desiring to establish and maintain a public library may pass and enter upon its minutes a resolution to the effect that a free public library is established under the provision of Montana laws relating to public libraries.

(2) By petition signed by not less than ten per centum (10%) of the resident taxpayers whose names appear upon the last completed assessment roll of the city or county being filed with the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which they may by resolution establish a public library; the governing body shall give notice of the contemplated action in a newspaper of general circulation for two consecutive weeks giving therein the date and place of the meeting at which the contemplated action is proposed to be taken.

(3) Upon a petition being filed with the governing body and signed by not less than five per centum (5%) of the resident taxpayers of any city or county requesting an election the governing body shall submit to a vote of the qualified electors thereof, at the next general election, the question of whether a free public library shall be established. If such a petition is submitted for a city or town, the petition must be signed by resident taxpayers of said city or town. If such a petition is submitted to the county commissioners of a county asking for the establishment of a county library, the petition must be signed by resident taxpayers of the county who reside outside the corporate limits of an incorporated city or town located in said county which may already have established a free public library for such city or town.

If such petition specifically asks that a special election be called, and such petition is signed by thirty-five per centum (35%) of the resident freeholders affected by such petition, then the governing body shall, upon receipt of such petition, immediately set a date for a special election, which date shall be as soon as the procedures for establishing a special election will allow.

If at such election, a majority of the electors voting on the question vote in favor of the establishment of a library, the governing body shall immediately take the necessary steps to establish and maintain said library, or to contract with any city or county for library service to be rendered to the inhabitants of such city, town or county.

History: En. Sec. 2, Ch. 260, L. 1967;
amd. Sec. 1, Ch. 263, L. 1969.

Amendments
The 1969 amendment substituted "any" for "either" in the introductory sentence and added subdivision (3).

44-220. Levying of tax—special library fund—payments upon order or warrant. The governing body of any city or county which has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax not to exceed 3 mills on the dollar upon all property in such county, which may be levied by the governing body of such county, and not to exceed 4½ mills on the dollar upon all property in such city or town, which may be levied by the governing body of such city or town, in the amount necessary to maintain adequate public library service. The proceeds of such tax shall constitute a separate fund called the public library fund and shall not be used for any purpose except those of the public library. No money shall be paid out of the

public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

Bonds may be issued by the governing body in the manner prescribed by law for the erection and equipment of public library buildings and the purchase of land therefor.

History: En. Sec. 3, Ch. 260, L. 1967.

44-221. Board of trustees — appointment — composition of board — tenure. Upon the establishment of a public library under the provisions of this act, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the chairman of the board of county commissioners, with the advice and consent of said board, shall appoint a board of trustees for the county library. The library board shall consist of five trustees. Not more than one member of the governing body shall be, at any one time, a member of such board. Trustees shall serve without compensation but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds. Trustees shall hold their office for five years from the date of appointment, and until their successors are appointed. Initially appointments shall be made for one, two, three, four and five year terms. Annually thereafter, there shall be appointed before the first day of July of each year in the same manner as the original appointments for a five year term, a trustee to take the place of the retiring trustee. Trustees shall serve no more than two full terms in succession. Following such appointments in July of each year, the trustees shall meet and elect a chairman and such other officers as they deem necessary, for one year terms. Vacancies in the board of trustees shall be filled for the unexpired term in the same manner as original appointments.

History: En. Sec. 4, Ch. 260, L. 1967.

44-222. Board of trustees—powers and duties. The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(1) Adopt bylaws, rules and regulations for its own transaction of business and for the government of the library, not inconsistent with law.

(2) Establish and locate a central public library and may establish branches thereof at such places as are deemed necessary.

(3) Have the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library and other libraries to give and receive library service, through the boards of such regions, counties and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts.

(4) Have the power to acquire by purchase, devise, lease or otherwise, and to own and hold real and personal property, in the name of the city

or county or both as the case may be, for the use and purposes of the library, and to sell, exchange or otherwise dispose of property real or personal when no longer required by the library, and to insure the real and personal property of the library.

(5) Pay necessary expenses of members of the library staff when on business of the library.

(6) Prepare an annual budget indicating what support and maintenance of the public library will be required from public funds for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

(7) Make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement. The trustees shall also provide for the keeping of such records as shall be required by the Montana State Library in its request for an annual report from the public libraries and shall submit such an annual report to the state library.

(8) Have the power to accept gifts, grants and donations from whatever source and to expend the same for the specific purpose of the gift, grant, or donation. These gifts, grants and donations shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

(9) Exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.

History: En. Sec. 5, Ch. 260, L. 1967.

44-223. Board of trustees—chief librarian—personnel—compensation. The board of trustees of each library shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board. With the recommendation of the chief librarian the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation and prescribe their duties.

History: En. Sec. 6, Ch. 260, L. 1967.

44-224. Free use of library—exclusions—extending privileges. Every library established under the provisions of this act shall be free to the use of the inhabitants of the city or the county supporting such library. The board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The board may extend the privileges and use of the library to persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.

History: En. Sec. 7, Ch. 260, L. 1967.

44-225. Providing library services—co-operation and merging of boards, institutions and agencies. Library boards of trustees, boards of other

educational institutions, library agencies, and local political subdivisions are hereby empowered to co-operate, merge or combine in providing library service.

History: En. Sec. 8, Ch. 260, L. 1967.

44-226. Cities or towns with existing tax-supported libraries—notification—exemption from county taxes. After the establishment of a county free library as provided in this act, the governing body of any city or town which has an existing tax-supported public library may notify the board of county commissioners that such city or town does not desire to be a part of the county library system. Such notification shall exempt the property in such city or town from liability for taxes for county library purposes.

History: En. Sec. 9, Ch. 260, L. 1967.

44-227. "City" defined. Wherever the word "city" is used in this act it means city or town.

History: En. Sec. 11, Ch. 260, L. 1967.

44-228. Continued existence of all public libraries. All public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.

History: En. Sec. 12, Ch. 260, L. 1967.

CHAPTER 3—CITY FREE PUBLIC LIBRARIES

(Repealed—Section 12, Chapter 260, Laws of 1967)

44-301 to 44-303. (5049 to 5051) Repealed.

Repeal

These sections (Sec. 1, p. 110, L. 1883; Secs. 5039 to 5041, Pol. C. 1895; Sec. 1, p. 229, L. 1897; Sec. 1, Ch. 32, L. 1931;

Sec. 1, Ch. 61, L. 1947), relating to the establishment of free public libraries, were repealed by Sec. 12, Ch. 260, Laws of 1967.

CHAPTER 4—STATE LAW LIBRARY

Section 44-403. Powers and duties of board.

44-404. Librarian—term of office.

44-410. Accounts—approval.

44-412. Assistance in preparing index.

44-403. Powers and duties of board. The powers and duties of said board are as follows:

(1) to (5). * * * [Same as parent volume.]

(6) To report as provided in section 2 [82-4002] of this act.

(7). * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 153, L. 1949; amd. Sec. 14, Ch. 93, L. 1969.

important transactions of the board, and of the operations of the library, with suggestions and recommendations as to what the board deems necessary for the increased utility and efficiency of the library" in subdivision (6).

Amendments

The 1969 amendment substituted "as provided in section 2 of this act" for "to the governor, biennially, a statement of all

44-404. Librarian—term of office. The librarian appointed by the board shall hold office for the term of two (2) years, unless sooner removed by a majority vote of the trustees.

History: En. Sec. 4, Ch. 153, L. 1949; amd. Sec. 21, Ch. 177, L. 1965.

thousand dollars (\$1,000.00), to be approved by the chief justice, and deposited with the secretary of state."

Amendment

The 1965 amendment deleted a second sentence reading, "The librarian must execute an official bond, in the sum of one

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

44-407. Repealed.

Repeal

This section (Sec. 7, Ch. 153, L. 1949),

relating to the state law library fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

44-410. Accounts—approval. All accounts for the proofing and printing of books, legal periodicals, library collections, furniture, fixtures and supplies must be prepared by the librarian, submitted to and approved by at least one (1) member of the board of trustees.

History: En. Sec. 10, Ch. 153, L. 1949; amd. Sec. 13, Ch. 97, L. 1961; amd. Sec. 85, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "and thereafter paid out of the state treasury from the library fund" at the end of the section.

44-412. Assistance in preparing index. The law librarian is authorized and empowered to engage and employ stenographic assistance in the preparation of such indexes.

History: En. Sec. 12, Ch. 153, L. 1949; amd. Sec. 86, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "and said assistant shall be paid out of the library fund" at the end of the section.

CHAPTER 5—HISTORICAL SOCIETY—LIBRARY AND MUSEUM

- Section 44-516. Historical society continued and perpetuated—purposes.
 44-517. Definition of terms.
 44-518. Library and museum independent of other state institutions.
 44-519. Board of trustees—appointment and terms of members.
 44-520. Qualifications of trustees.
 44-521. Executive committee of trustees.
 44-522. Reimbursement of trustees.
 44-523. Powers and duties of trustees.
 44-524. Director's responsibility—assistants and employees.
 44-525. Official seal of society.
 44-526. Furnishings and fittings in veterans' and pioneers' building.
 44-527. Fund raising drives—revenues and receipts.
 44-528. Fine arts' commission abolished.
 44-529. Admission fees for antique automobile collection—disposition of proceeds.

44-501 to 44-515. Repealed.

Repeal

These sections (Secs. 1 to 15, Ch. 134, L. 1949; Secs. 14, 19, Ch. 97, L. 1961),

relating to the historical society and the historical library and museum, were repealed by Sec. 14, Ch. 47, Laws 1963.

Sections 46 to 48, Ch. 147, Laws 1963, purported to amend sections 44-509, 44-510, and 44-514, respectively; however, under the rule of section 43-515, such amendments were void and did not revive the amended sections.

44-516. Historical society continued and perpetuated—purposes. The historical society of Montana, originally organized under the provisions of an act of the legislative assembly of the territory of Montana, entitled “an act to incorporate the historical society of Montana,” approved February 2, 1865, and thereafter made to become the historical society of the state of Montana by an act approved March 4, 1891, entitled “an act concerning the historical society for the state of Montana and making an appropriation therefor,” and by “an act to perpetuate the historical society of the state of Montana,” approved March 1, 1949, is hereby continued and perpetuated as the “Montana Historical Society” and as such constitutes an agency of state government for the use, learning, culture and enjoyment of the citizens of the state and for the acquisition, preservation and protection of historical records, art archival and museum objects, historical places, sites and monuments and the custody, maintenance and operation of the historical library, museums, art galleries, and historical places, sites and monuments.

History: En. Sec. 1, Ch. 47, L. 1963.

Title of Act

An act continuing and perpetuating the Montana historical society and prescribing the powers and duties of the board of trustees of the society; abolishing the Montana fine arts' commission; and repealing sections 44-501, 44-502, 44-503, 44-504, 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947.

tees of the society; abolishing the Montana fine arts' commission; and repealing sections 44-501, 44-502, 44-503, 44-504, 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947.

44-517. Definition of terms. As used in this act, (1) “Society” means the Montana historical society and includes

- (a) The historical and miscellaneous libraries and their contents;
- (b) Any museums and art galleries, and their contents, acquired by the trustees;
- (c) Any historical places, sites or monuments acquired or developed by the society;
- (d) Any divisions, departments and activities operated in conjunction with the historical library as are established by the trustees; and
- (e) Any books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections of artifacts and minerals, furniture or fixtures acquired by the trustees.

(2) “Trustees” means the board of trustees of the Montana historical society.

(3) “Committee” means the executive committee of the board of trustees of the Montana historical society.

History: En. Sec. 2, Ch. 47, L. 1963.

44-518. Library and museum independent of other state institutions. Any historical library or museum administered by the society in accordance with the provisions of this act shall be independent of any other

library, museum, or gallery owned, maintained or operated by the state of Montana.

History: En. Sec. 3, Ch. 47, L. 1963.

44-519. Board of trustees—appointment and terms of members. The government and administration of the society is vested in a board of fifteen (15) trustees, appointed by the governor, by and with the consent of the senate. Three (3) each of the original members of the board shall be appointed for one (1), two (2), three (3), four (4) and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the unexpired term.

History: En. Sec. 4, Ch. 47, L. 1963.

Removal of Director of State Historical Society

Under this section and sections 44-523 and 59-405 the power to remove the director of the state historical society lies

in the board of trustees of the state historical society and it may do so without notice or opportunity to be heard. State ex rel. MacGivra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

44-520. Qualifications of trustees. Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willingness to devote time and effort in the public interest and to serve without compensation. The governor shall in so far as possible, appoint trustees from the various geographical areas of the state.

History: En. Sec. 5, Ch. 47, L. 1963.

44-521. Executive committee of trustees. The trustees may select an executive committee of five (5) trustees and delegate to the committee such functions in aid of the efficient administration of the affairs of the society as the trustees deem advisable.

History: En. Sec. 6, Ch. 47, L. 1963.

44-522. Reimbursement of trustees. The trustees shall serve without compensation, but may be reimbursed for mileage.

History: En. Sec. 7, Ch. 47, L. 1963.

44-523. Powers and duties of trustees. The powers and duties of the trustees are as follows:

(1) To elect annually from among their number a president, a vice-president, and a secretary.

(2) To adopt bylaws for their own government, and to make rules and regulations, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people.

(3) To appoint a director, fix his salary, and prescribe his duties and responsibilities.

(4) To create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships.

(5) To sell or exchange publications and surplus copies of books or other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art.

(6) To see that the collections and properties of the society are maintained in good order and repair.

(7) To report to the governor and the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(8) To accept, receive and administer in the name of the society, any gifts, donations, properties, securities, bequests and legacies that may be made to the society. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

(9) To collect, assemble, preserve and display where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular, and generally of the Pacific Northwest, Northern Rocky Mountain and Northern Great Plains regions, and of the United States of America when pertinent; to procure from pioneers, early settlers and others, narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west and all other related documents of Montana's history, development and society; to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area with particular attention to Indian, military and pioneer artifacts and implements; to collect and preserve such natural history objects as fossils, plants, minerals and animals; to collect and preserve books, maps, manuscripts and other materials as will tend to facilitate historical, scientific, and antiquarian research; to promote the study of Montana history by lectures and publications; to generally foster and encourage the fine arts and cultural activities in Montana; to receive for and on behalf of the state by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and elsewhere; and to microfilm papers or documents in danger of disappearance or injury.

History: En. Sec. 8, Ch. 47, L. 1963.

Removal of Director of State Historical Society

Under this section and sections 44-519 and 59-405 the power to remove the director of the state historical society lies

in the board of trustees of the state historical society and it may do so without notice or opportunity to be heard. State ex rel. MacGivra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

44-524. Director's responsibility—assistants and employees. The director is fully responsible for the immediate direction, management and

control of the society, subject to the general programs and policies established by the trustees. The director may appoint and employ all assistants and employees required for the management of the historical society, subject to approval by the trustees.

History: En. Sec. 9, Ch. 47, L. 1963.

References

State ex rel. MacGivra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

44-525. Official seal of society. The design of the official seal of the society shall be substantially as follows: A central group representing a covered immigrant wagon drawn by two yoke of oxen, showing prairie in the foreground, mountains in the background and directly beneath it the figures "1865." The seal shall be two inches in diameter and surrounded by the words, "Montana Historical Society Seal."

History: En. Sec. 10, Ch. 47, L. 1963.

44-526. Furnishings and fittings in veterans' and pioneers' building. The offices, library, museums and galleries, and quarters for the activities of the society in the veterans' and pioneers' memorial building shall be decorated, fitted, furnished and maintained in dignity and in harmony with the purposes of the society. All furniture and fittings for storage and the use of the library shall be, in design and function, adapted to the efficient and dignified operation and administration of the activities of the society.

History: En. Sec. 11, Ch. 47, L. 1963.

44-527. Fund raising drives—revenues and receipts. The society may engage in such fund raising drives and public contribution campaigns as will contribute to its continued development and support. It may produce, reproduce, sell, or exchange art objects, film, books, photographs, magazines, pamphlets, and museum objects which are appropriate and will bring credit to the society and to Montana. It may also receive fees, commissions and royalties on the display and sale of arts and crafts. All profits, revenues, royalties or fees received in any such manner shall be deposited in the state treasury and may not be used for any purposes other than the improvement, development and operation of the society.

History: En. Sec. 12, Ch. 47, L. 1963.

Sale of Ancient Warrants

Chapter 134, Laws 1963, effective until June 30, 1965, provides for sale of certain old territorial and state warrants by the territorial centennial commission. The act reads: "An act to authorize and direct the state auditor to deliver certain warrants to the Montana territorial centennial commission.

"Section 1. The state auditor is hereby authorized and directed to deliver to the Montana territorial centennial commission all remaining territorial warrants and all state warrants dated prior to 1899 in

his possession. The commission shall sell these warrants in any manner they see fit, upon authorization by the state controller.

"Section 2. All money realized from the sale of these warrants shall be deposited with the state treasurer to the credit of the Montana territorial centennial commission and warrants issued upon authority of officers of the commission.

"Section 3. This act is effective from July 1, 1963, to June 30, 1965. On June 30, 1965, the existence of the commission shall cease, and all moneys of the commission shall be transferred to the state general fund."

44-528. Fine arts' commission abolished. The Montana fine arts' commission is abolished. All records, property and moneys of the Montana fine arts' commission are transferred to the society.

History: En. Sec. 13, Ch. 47, L. 1963. 44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947, are repealed."

Repealing Clause

Section 14 of Ch. 47, Laws 1963 read
"Sections 44-501, 44-502, 44-503, 44-504,

44-505, 44-506, 44-507, 44-508, 44-509, 44-510, 44-511, 44-512, 44-513, 44-514, 44-515, 19-119, 19-120 and 19-121, R. C. M. 1947, are repealed."

44-529. Admission fees for antique automobile collection—disposition of proceeds. An admission fee shall be set by the board of trustees of the Montana historical society and paid by patrons of the antique Ford automobile collection. Admission fee proceeds up to the amount of twelve thousand five hundred dollars (\$12,500) per fiscal year shall be deposited in the general fund. Proceeds over such amount each fiscal year shall be deposited in the Montana historical society account in the earmarked revenue fund.

History: En. Sec. 2, Ch. 324, L. 1967. mobile collection for the biennium ending June 30, 1969.

Title of Act

An act to appropriate money from the general fund to the Montana historical society to lease, operate and maintain a building to house the antique Ford auto-

Appropriation

Section 1 of Chapter 324, Laws 1967, appropriated funds for housing the antique automobile collection during the biennium ending June 30, 1969.

CHAPTER 6—INTERSTATE LIBRARY COMPACT

Section 44-601. Text of library compact.

44-602. Executive officer of state library commission as administrator.

44-601. Text of library compact. The Interstate Library Compact is hereby approved, enacted into law, and entered into by the state of Montana, which compact is in full as follows:

INTERSTATE LIBRARY COMPACT

Article I. Policy and Purpose

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the state's party to this compact to co-operate and share their responsibilities; to authorize co-operation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a co-operative basis; and to authorize co-operation and sharing among localities, states and others in providing joint or co-operative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

Article II. Definitions

As used in this compact:

(a) "Public library agency" means any unit or agency of local or state government operating or having power to operate a library.

(b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.

(c) "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or co-operative furnishing of library services.

Article III. Interstate Library Districts

(a) Any one or more public library agencies in a party state in co-operation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may co-operate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or co-operative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

1. Undertake, administer and participate in programs or arrangements for securing, lending or servicing books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.

2. Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.

3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

4. Employ professional, technical, clerical and other personnel, and fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the in-service training of such personnel.

5. Sue and be sued in any court of competent jurisdiction.

6. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.

7. Construct, maintain and operate a library, including any appropriate branches thereof.

8. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

Article IV. Interstate Library Districts, Governing Board

(a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

Article V. State Library Agency Co-operation

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or co-operative library programs, render joint or co-operative library services, and enter into and perform arrangements for the co-operative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a co-operative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service or arrangement shall contain provisions covering the subjects detailed in Article VI of this compact for interstate library agreements.

Article VI. Library Agreements

(a) In order to provide for any joint or co-operative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

1. Detail the specific nature of the services, programs, facilities, arrangements or properties to which it is applicable.

2. Provide for the allocation of costs and other financial responsibilities.

3. Specify the respective rights, duties, obligations and liabilities of the parties.

4. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.

(c) No library agreement shall become effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

Article VII. Approval of Library Agreements

(a) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

(b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

Article VIII. Other Laws Applicable

Nothing in this compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on

any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

Article IX. Appropriations and Aid

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

Article X. Compact Administrator

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and co-operate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

Article XI. Entry into Force and Withdrawal

(a) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(b) This compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

Article XII. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this com-

pact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 119, L. 1967. law the Interstate Library Compact and designating the executive officer of the state library commission as compact administrator for said compact.

Title of Act

An act approving and enacting into

44-602. Executive officer of state library commission as administrator.
 The executive officer of the state library commission shall be the compact administrator of the Interstate Library Compact.

History: En. Sec. 2, Ch. 119, L. 1967.

TITLE 45—LIENS

- Chapter 1. Liens in general, definitions, creation and effect, 45-109, 45-112, 45-116.
3. Redemption from liens—extinction, 45-301, 45-308.
4. Loggers' liens, 45-401.
7. Crop liens for seed, grain and hail insurance, 45-704, 45-707.
8. Threshermen's liens, 45-809.
9. Farm laborers' liens, 45-911.
10. Laborers' and materialmen's liens on oil and gas wells and pipelines, 45-1003.
11. Miscellaneous liens, 45-1106, 45-1107.
13. Stoppage in transit, Repealed—Section 10-102, Chapter 264, Laws of 1963.
14. Crop or grain lien for dusting or spraying, 45-1410.
15. Federal tax lien, 45-1501 to 45-1507.

CHAPTER 1—LIENS IN GENERAL, DEFINITIONS, CREATION AND EFFECT

- Section 45-109. Lien on future interest.
45-112. Certain contracts void.
45-116. Holder of lien not entitled to compensation.

45-106. (8224) Repealed.

Repeal

This section (Sec. 3735, Civ. C. 1895), relating to mortgages and pledges, was

repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

45-109. (8227) Lien on future interest. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. Except as otherwise provided by the Uniform Commercial Code, in such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest. [Effective January 1, 1965.]

History: En. Sec. 3742, Civ. C. 1895; re-en. Sec. 5712, Rev. C. 1907; re-en. Sec. 8227, R. C. M. 1921; amd. Sec. 11-118, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2883. Field Civ. C. Sec. 1589.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the second sentence.

45-112. (8230) Certain contracts void. Except as otherwise provided by the Uniform Commercial Code: all contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void. [Effective January 1, 1965.]

History: En. Sec. 3751, Civ. C. 1895; re-en. Sec. 5715, Rev. C. 1907; re-en. Sec. 8230, R. C. M. 1921; amd. Sec. 11-119, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2889. Based on Field Civ. C. Sec. 1592.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

45-116. (8234) Holder of lien not entitled to compensation. Except as otherwise provided by the Uniform Commercial Code: One who holds

property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 47-109 and 47-110. [Effective January 1, 1965.]

History: En. Sec. 3755, Civ. C. 1895; re-en. Sec. 5719, Rev. C. 1907; re-en. Sec. 8234, R. C. M. 1921; amd. Sec. 11-120, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2892. Field Civ. C. Sec. 1596.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

CHAPTER 3—REDEMPTION FROM LIENS—EXTINCTION

Section 45-301. Right to redeem.

45-308. When restoration extinguishes lien.

45-301. (8238) Right to redeem. Except as otherwise provided by the Uniform Commercial Code, every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed. [Effective January 1, 1965.]

History: En. Sec. 3780, Civ. C. 1895; re-en. Sec. 5723, Rev. C. 1907; re-en. Sec. 8238, R. C. M. 1921; amd. Sec. 11-121, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2903.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

45-308. (8245) When restoration extinguishes lien. Except as otherwise provided by the Uniform Commercial Code: the voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for a good consideration. [Effective January 1, 1965.]

History: En. Sec. 3794, Civ. C. 1895; re-en. Sec. 5730, Rev. C. 1907; re-en. Sec. 8245, R. C. M. 1921; amd. Sec. 11-122, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2913. Based on Field Civ. C. Sec. 1607.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

CHAPTER 4—LOGGERS' LIENS

Section 45-401. Who entitled to lien.

45-401. Who entitled to lien. Every person, general partnership, limited partnership, corporation or association performing labor upon, or who shall assist in obtaining or securing sawlogs, piling, railroad ties, cordwood, or other timber, has a lien upon the same and upon all other sawlogs, piling, railroad ties, cordwood, or other timber which, at the time of the filing of the claim or lien hereinafter provided, belonged to the person or corporation for whom the labor was performed, for the work or labor done upon or in obtaining or securing the particular sawlogs, piling, railroad ties, cordwood, or other timber in said claim or

lien described, whether such work or labor was done at the instance of the owner of the same or his agent, or a contractor or subcontractor, or any person in behalf of such owner or his agent, or a contractor or subcontractor. The cook in a logging-camp shall be regarded as a person who assists in obtaining or securing any of the timber herein mentioned.

History: En. Sec. 1, p. 126, L. 1899; re-en. Sec. 5819, Rev. C. 1907; amd. Sec. 1, Ch. 60, L. 1909; re-en. Sec. 8318, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1967. Cal. Civ. C. Sec. 3065.

Amendments

The 1967 amendment inserted "general partnership, limited partnership, corporation or association" after "Every person" at the beginning of the section.

Persons Entitled to Lien

A logging corporation acting in the capacity of an independent contractor was not a "person" as set forth in this chapter and was not entitled to a lien thereunder. *Jack Long Logging Co. v. Pyramid Mountain Lumber, Inc.*, 143 M 87, 387, P 2d 712.

CHAPTER 5—MECHANICS' LIENS

45-501. (8339) Who entitled to lien.

Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under this section in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Abandoned Improvements—Delay in Completion

Where contract specifically said that contractor's ability to continue work would be dependent upon prompt payment by owner as agreed and owner did not pay as agreed, contractor was allowed foreclosure

of lien even though he was unable to complete the work. *Gramm v. Insurance Unlimited*, 141 M 456, 378 P 2d 662.

Claim Arising upon Contract

A mechanic's lien under this section and sections 45-502 to 45-512 is not a claim arising upon a contract under section 91-2704 and the lien is not lost because creditor's claim is not filed. *Hammer v. Chapin*, 256 F Supp 818, 820.

References

Frank J. Trunk & Son v. DeHaan, 143 M 442, 391 P 2d 353 (concurring opinion).

45-502. (8340) How lien perfected.

Compiler's Note

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*, 111 M 471, annotated under this section in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

Effect of Failure to File Lien within Ninety Days after Material Is Furnished—Subsequent Contract

Where no privity of contract existed between subcontractor and the owners of the improved building and subcontractor did not comply with the ninety-day limitation for filing lien, such subcontractor lost all right to sue owner who had paid prime contractor for work done, and subcontractor was also barred from adding on time period of a subsequent contract with owners for purposes of filing its mechanic's lien. *Frank J. Trunk & Son v. DeHaan*, 143 M 442, 391 P 2d 353.

Effect of Overstatement of Amount

Where there were indications that contractor had "padded the bill" for nearly \$4000 but no proof that he had done so with intent to defraud, he did not lose his right to a mechanic's lien but the trial court should require an accounting. *Hammond v. Knievel*, 141 M 433, 378 P 2d 388.

Question of Continuous Open Account One of Fact

The question of whether a continuous open account existed some fifteen months after completion of the contracted construction work was one of fact and the finding by the trial court would not be disturbed on appeal when supported by evidence. *Hammond v. Knievel*, 141 M 433, 378 P 2d 388.

45-504. (8342) What property affected.**Compiler's Note**

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*,

111 M 471, annotated under these sections in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

45-505. (8343) Leasehold interest—how affected.**Compiler's Note**

The decision in *Caird Engineering Works v. Seven-up Gold Mining Co., Inc.*,

111 M 471, annotated under these sections in the parent volume, is reported at 111 P 2d 267 rather than at 111 P 2d 1267.

45-506. (8344) Priority of lien over mortgage or other liens.**Lien Preferred to Subsequent Mortgage**

A mechanic's lien for performed work and furnished material for building, erected on land of decedent prior to his death, which was perfected August 23, 1963 after decedent's death, had priority over a mortgage executed by the suc-

cessor to the estate of the deceased on January 21, 1965 to the small business administration, an agency of the United States, which failed to protect itself by withholding a sufficient amount of the loan proceeds to retire the lien. *Hammer v. Chapin*, 256 F Supp 818, 820.

CHAPTER 7—CROP LIENS FOR SEED, GRAIN AND HAIL INSURANCE**Section 45-704. Acknowledgment of satisfaction of lien.****45-707. Satisfaction of lien.**

45-704. (8362) Acknowledgment of satisfaction of lien. Whenever the indebtedness which is a lien upon such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of the action. [Effective January 1, 1965.]

History: En. Sec. 4, Ch. 15, Ex. L. 1918; re-en. Sec. 8362, R. C. M. 1921; amd. Sec. 11-123, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "ac-

knowledge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

45-707. (8365) Satisfaction of lien. Whenever the indebtedness, which is a lien upon such grain or other crops, is paid or satisfied on or before November 1 of the then current year, it is the duty of the lienor to acknowledge satisfaction thereof within twenty days after receiving payment, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge of said lien as aforesaid he is liable to any person injured thereby in the amount of such injury and the costs of action. If any hail lien is not satisfied on or before the first day of March of the next succeeding year after the insurance was carried on the crop, the same shall be deemed satisfied and released of record. [Effective January 1, 1965.]

History: En. Sec. 3, Ch. 223, L. 1921; re-en. Sec. 8365, R. C. M. 1921; amd. Sec. 11-124, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledge satisfaction thereof" in the first part of the first sentence.

CHAPTER 8—THRESHERMEN'S LIENS

Section 45-809. Acknowledgment of satisfaction of lien—penalty.

45-809. (8374) Acknowledgment of satisfaction of lien—penalty. Whenever the indebtedness which is a lien upon any such grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record; and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

History: En. Sec. 9, Ch. 25, L. 1915; re-en. Sec. 8374, R. C. M. 1921; amd. Sec. 11-125, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a mortgage" after "acknowl-

edge satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or other crops" in the latter part of the section.

CHAPTER 9—FARM LABORERS' LIENS

Section 45-911. Acknowledgment of satisfaction of lien—penalty.

45-911. (8374.11) Acknowledgment of satisfaction of lien—penalty. Whenever the indebtedness which is a lien upon any of such crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record, and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such crops, he is liable to any person injured thereby in the amount of such injury and costs of action. [Effective January 1, 1965.]

History: En. Sec. 11, Ch. 196, L. 1935; amd. Sec. 11-126, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a chattel mortgage" after "acknowledge satisfaction thereof" in the first

part of the section; inserted "within thirty (30) days after being requested to do so by a person having a property interest in such crops" in the latter part of the section; and made a minor change in punctuation.

CHAPTER 10—LABORERS' AND MATERIALMEN'S LIENS ON OIL AND GAS WELLS AND PIPELINES

Section 45-1003. Manner of enforcing liens—duty of county clerks.

45-1003. (8377) Manner of enforcing liens—duty of county clerks. The liens herein created shall arise, be perfected, have the same priority and be enforced in the same manner and the duty of county clerks with

respect to the filing and abstracting of liens shall be the same as now provided by the laws of Montana for materialmen's and mechanic's liens, with the following exceptions:

(1) The statement of lien shall be filed with the county clerk of the county in which any part of such land, leasehold, or pipeline is situated.

(2) Such statement must be filed within six (6) months after the date upon which said material or services were last furnished or labor last performed under the contract.

History: En. Sec. 3, Ch. 45, L. 1917; re-en. Sec. 8377, R. C. M. 1921; amd. Sec. 2, Ch. 152, L. 1923; amd. Sec. 3, Ch. 143, L. 1957; amd. Sec. 1, Ch. 193, L. 1963.

and added, at the end of the section, the words "with the following exceptions" and the numbered paragraphs.

Amendment

The 1963 amendment inserted the words "arise, be perfected, have the same priority and" near the beginning of the section;

Repealing Clause

Section 2 of Ch. 193, Laws 1963 read "Sections 45-1004, 45-1005 and 45-1006, R. C. M. 1947, are hereby repealed."

45-1004 to 45-1006. Repealed.

Repeal

These sections (Secs. 4 to 6, Ch. 143, L. 1957), relating to the perfection and pri-

ority of oil and gas well and pipeline liens, were repealed by Sec. 2, Ch. 193, Laws 1963.

CHAPTER 11—MISCELLANEOUS LIENS

Section 45-1106. Agisters' liens and liens for service—priority.

45-1107. Secured party may take possession of property.

45-1104. (8381) Repealed.

Repeal

This section (Sec. 3933, Civ. C. 1895), relating to liens of sellers of personal

property, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

45-1106. (8383) Agisters' liens and liens for service—priority. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant thereof by labor or skill employed for the making, repairing, protection, improvement, safe-keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner or lawful claimant for such service and for material, if any, furnished in connection therewith. A ranchman, farmer, agister, herder, hotel-keeper, livery, boarding, or feed stable-keeper, to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted, and there is a contract, express or implied, for their keeping, feeding, herding, pasturing, or ranching, has a lien upon such stock for the amount due for keeping, feeding, herding, pasturing, or ranching the same, and is authorized to retain possession thereof until the sum due is paid. The lien hereby created shall not take precedence over perfected security interests under the Uniform Commercial Code—Secured Transactions, or other recorded liens on the property involved, unless within ten days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said secured party or other lien holder, stating his intention to assert a lien on said property, under the terms of this act, and stating

the nature and approximate amount of the work, or feed, performed or furnished or intended to be performed or furnished therefor.

Such service may be made either by personal service or by mailing by registered mail a copy of said notice to the secured party or other lien holder at his last known post-office address. Said service shall be deemed complete upon the deposit of the notice in the post office. [Effective January 1, 1965.]

History: Similar early acts were Sec. 1, p. 331, Bannack Stat.; re-en. Sec. 29, p. 514, Cod. Stat. 1871; re-en. Sec. 848, 5th Div. Rev. Stat. 1879; re-en. Sec. 1394, 5th Div. Comp. Stat. 1887; amd. Sec. 3935, Civ. C. 1895.

En. Sec. 3935, Civ. C. 1895; re-en. Sec. 5805, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1921; re-en. Sec. 8383, R. C. M. 1921; amd. Sec. 11-127, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3051. First paragraph based on Field Civ. C. Sec. 1696.

Amendment

The 1963 amendment substituted

45-1107. (8384) Secured party may take possession of property. Within ten days after the date of such mailing, or five days after such personal service, the secured party or other lien holder, or his representative, shall have the right to take possession of said property upon payment of the amount of the lien then accrued. A failure on the part of such secured party or other lien holder so to do shall constitute a waiver of the priority of such security interest or other lien over the lien created by this act. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 117, L. 1921; re-en. Sec. 8384, R. C. M. 1921; amd. Sec. 11-128, Ch. 264, L. 1963. Cal. Civ. C. Sec. 3052.

Amendment

The 1963 amendment substituted "se-

"perfected security interests under the Uniform Commercial Code — Secured Transactions" in the first part of the third sentence in the first paragraph for "the lien of prior chattel mortgages"; and substituted "secured party" for "mortgagee" in the third sentence in the first paragraph and in the first sentence in the second paragraph.

Other Recorded Liens

The term "other recorded liens" includes conditional sales contracts. *Williamson v. Skerritt*, 141 M 422, 378 P 2d 215.

cured party" for "mortgagee" in two places; substituted "security interest" for "chattel mortgage" in the second sentence; and added "over the lien created by this act" at the end of the section.

CHAPTER 13—STOPPAGE IN TRANSIT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

45-1301 to 45-1305. (8396 to 8400) Repealed.

Repeal

These sections (Secs. 3970 to 3974, Civ. C. 1895; Secs. 5837 to 5841, Rev. C. 1907; Secs. 8396 to 8400, R. C. M. 1921), relating

to stoppage in transit, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 14—CROP OR GRAIN LIEN FOR DUSTING OR SPRAYING

Section 45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure.

45-1410. Acknowledgment of satisfaction and discharge of lien—penalty for failure. Whenever the indebtedness which is a lien upon any such grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction thereof, and to discharge the said lien of record;

and if any lienor fails to acknowledge satisfaction and discharge said lien as aforesaid, within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops, he is liable to any person injured thereby in the amount of such injury and the costs of action. [Effective January 1, 1965.]

History: En. Sec. 10, Ch. 205, L. 1953; amd. Sec. 11-129, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "as in the case of a mortgage" after "acknowledge

satisfaction thereof" in the first part of the section; and inserted "within thirty (30) days after being requested to do so by a person having a property interest in such grain or crops" in the latter part of the section.

CHAPTER 15—FEDERAL TAX LIEN

- Section 45-1501. Federal tax lien—place of filing.
 45-1502. Execution of notices and certificates.
 45-1503. Duties of filing officer.
 45-1504. Fees.
 45-1505. Uniformity of interpretation.
 45-1506. Short title.
 45-1507. Tax liens and notices filed before effective date of this act.

45-1501. Federal tax lien—place of filing. (a) Notices of liens upon real property for taxes payable to the United States, and certificates and notices affecting the liens shall be filed in the office of the clerk and recorder of the county or counties in which the real property subject to a federal tax lien is situated.

(b) Notices of liens upon personal property, whether tangible or intangible, for taxes payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the tax lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(2) in all other cases in the office of the clerk and recorder of the county where the taxpayer resides at the time of filing of the notice of lien.

History: En. Sec. 1, Ch. 228, L. 1967.

Title of Act

An act to revise the Uniform Federal Tax Lien Registration Act, authorizing the filing of notices of liens for taxes

payable to the United States of America and of certificates discharging such liens, and to make uniform the law with reference thereto; repealing sections 84-3901, 84-3902, 84-3903, 84-3904, 84-3905, 84-3906, 84-3907, R. C. M. 1947.

45-1502. Execution of notices and certificates. Certification by the secretary of the treasury of the United States or his delegate of notices of liens, certificates, or other notices affecting tax liens entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

History: En. Sec. 2, Ch. 228, L. 1967.

45-1503. Duties of filing officer. (a) If a notice of federal tax lien, a refiling of a notice of tax lien, or a notice of revocation of any certificate described in subsection (b) is presented to the filing officer, and

(1) he is the secretary of state, he shall cause the notice to be marked, held and indexed in accordance with the provisions of subsection (4) of section 87A-9-403, Revised Codes of Montana 1947, as if the notice were a financing statement within the meaning of that code; or

(2) he is any other officer described in section 1 [45-1501] of this act, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the serial number of the district director and the total unpaid balance of the assessment appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge or subordination of any tax lien is presented to the secretary of state for filing he shall

(1) cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the uniform commercial code, except that the notice of lien to which the certificate relates shall not be removed from the files, and

(2) cause a certificate of discharge or subordination to be held, marked and indexed as if the certificate were a release of collateral within the meaning of the uniform commercial code.

(c) If a refiled notice of federal tax lien referred to in subsection (a) or any of the certificates or notices referred to in subsection (b) is presented for filing with any other filing officer specified in section 1 [45-1501], he shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate with the date of filing in any alphabetical federal tax lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of federal tax lien or certificate or notice affecting the lien, filed on or after July 1, 1967, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is two dollars (\$2). Upon request the filing officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a federal tax lien for a fee of one dollar (\$1) per page.

History: En. Sec. 3, Ch. 228, L. 1967.

45-1504. Fees. The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien is:

- (1) for a tax lien on real estate, two dollars (\$2).
- (2) for a tax lien on tangible and intangible personal property, two dollars (\$2).
- (3) for a certificate of discharge or subordination, one dollar (\$1).
- (4) for all other notices, including a certificate of release or non-attachment, two dollars (\$2). The officer shall bill the district directors

of internal revenue on a monthly basis for fees for documents filed by them.

History: En. Sec. 4, Ch. 228, L. 1967.

45-1505. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

History: En. Sec. 5, Ch. 228, L. 1967.

45-1506. Short title. This act may be cited as the Revised Uniform Federal Tax Lien Registration Act.

History: En. Sec. 6, Ch. 228, L. 1967.

45-1507. Tax liens and notices filed before effective date of this act. Filing officers with whom notices of federal tax liens, certificates and notices affecting such liens have been filed on or before July 1, 1967, shall, after that date, continue to maintain a file labeled "federal tax lien notices filed prior to July 1, 1967," containing notices and certificates filed in numerical order of receipt. If a notice of lien was filed on or before July 1, 1967, any certificate or notice affecting the lien shall be filed in the same office.

History: En. Sec. 9, Ch. 228, L. 1967.

Separability Clause

Section 7 of Ch. 228, Laws 1967 read "Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision

or application and to this end the provisions of the act are severable."

Repealing Clause

Section 8 of Ch. 228, Laws 1967 read "Repeal of prior acts. Sections 84-3901, 84-3902, 84-3903, 84-3904, 84-3905, 84-3906 and 84-3907, R. C. M. 1947, and all other acts or parts of acts in conflict herewith are hereby repealed."

TITLE 46—LIVESTOCK

- Chapter 1. Livestock industry—regulation by livestock commission, 46-105.
6. Brands—recording—venting—livestock mortgages, 46-609.
 7. Inspectors and detectives, 46-704, 46-707.
 8. Inspection of livestock before removal from county, 46-801 to 46-804, 46-806, 46-809 to 46-813.
 9. Livestock markets—inspection and quarantine—license and bonding, 46-904, 46-911, 46-918.1.
 10. Estrays—disposal of, 46-1005, 46-1006.
 11. Hides of slaughtered cattle—regulation—hide dealers' licenses, 46-1107.
 14. Legal fences—liability of owners for trespassing stock, 46-1411, 46-1413.
 19. Bounties for killing wild animals—killing dogs injuring livestock, 46-1901, 46-1903, 46-1904, 46-1912, 46-1914, 46-1915.
 21. Sheep—protection from predatory animals—tax, 46-2102, 46-2104.
 23. Grass conservation—grazing districts, 46-2305, 46-2306, 46-2331.
 27. County livestock protective committees, 46-2706.
 28. Cattle protective districts, 46-2801 to 46-2810.

CHAPTER 1—LIVESTOCK INDUSTRY—REGULATION BY LIVESTOCK COMMISSION

Section 46-105. Audit of bills—payment of expenses.

46-104. (3256) Duties and powers of commission.

Livestock Markets

In the regulation of livestock markets under section 46-907 the livestock commission has the power to determine whether or not a showing of convenience

and necessity has been made. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780, 781. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-105. (3257) Audit of bills—payment of expenses. It shall be the duty of the livestock commission to audit all bills for expenses incurred by it in the discharge of its duties, which shall be paid out of the livestock commission moneys in the earmarked revenue fund.

History: En. Sec. 5, Ch. 51, L. 1917; re-en. Sec. 3257, R. C. M. 1921; amd. Sec. 88, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "which shall be paid out of the livestock commission moneys in the earmarked revenue fund" at the end of the section for "and when found correct, to certify the same to the state auditor, who shall thereupon draw a warrant upon the state treasurer in favor of the party or parties en-

titled thereto for the amount so certified, which warrants shall be drawn upon and paid out of the livestock commission fund, which said fund shall be created by placing to its credit the amounts heretofore directed to be placed to the credit of the sheep inspection and indemnity fund and the stock inspection and detective fund by section 84-5212, and other funds hereafter appropriated for the support and maintenance of the said commission."

46-106. (3258) Repealed.

Repeal

Section 46-106 (Sec. 6, Ch. 51, L. 1917), relating to the annual report of the com-

mission, was repealed by Sec. 44, Ch. 93, Laws 1969.

CHAPTER 2—LIVESTOCK SANITARY BOARD AND STATE VETERINARY
SURGEON—QUARANTINE—INSPECTION AND DESTRUCTION OF
DISEASED STOCK—LICENSING DAIRIES, MILK PLANTS
AND SLAUGHTERHOUSES

46-241. (3291) Repealed.

Repeal

This section (Sec. 32, Ch. 262, L. 1921), relating to the livestock sanitary board

account, was repealed by Sec. 242, Ch. 147, Laws 1963.

46-242. (3292) Repealed.

Repeal

Section 46-242 (Sec. 33, Ch. 262, L. 1921), relating to the annual report of the

state veterinary surgeon, was repealed by Sec. 44, Ch. 93, Laws 1969.

CHAPTER 6—BRANDS—RECORDING—VENTING—
LIVESTOCK MORTGAGES

Section 46-609. Fees for recorder of marks and brands.

46-606. (3304) Right of owner of recorded brand.

Ownership of Cattle

Although under this section and section 67-308, prima facie owners of the recorded brand have the same interest in the cattle bearing their brand as shown in brand record, joint ownership of the cattle may be contradicted and overcome by other evidence under section 93-301-11. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 490.

In action by administrator of estate of deceased partner against surviving part-

ners to recover assets transferred by deceased during his last illness, evidence that deceased had a half interest in partnership cattle and failure of defendants to produce any of the partnership records at the trial in the lower court, overcame the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. *Marshall v. Minlschmidt*, 148 M 263, 419 P 2d 486, 491.

46-609. (3307) Fees for recorder of marks and brands. The general recorder of marks and brands shall charge and collect for the recording of each new mark or brand, or for recording each mark or brand transfer or for re-recording of each mark and brand the sum of ten dollars (\$10), and for a certified copy of any such record and each duplicate certificate one dollar (\$1), and all fees so collected shall be paid into the earmarked revenue fund for the use of the livestock commission; providing, however, that not more than ten per cent (10%) of the net re-recording fees after all expenses of re-recording are paid, shall be expended in any one year except in case of an emergency declared by the governor.

History: En. Sec. 7, Ch. 144, L. 1921; re-en. Sec. 3307, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1929; amd. Sec. 1, Ch. 109, L. 1949; amd. Sec. 1, Ch. 65, L. 1959; amd. Sec. 90, Ch. 147, L. 1963; amd. Sec. 1, Ch. 13, L. 1969.

Amendments

The 1963 amendment substituted "the

earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

The 1969 amendment substituted "for the recording of *** sum of ten dollars (\$10)" for "for recording each mark or brand the sum of eight dollars (\$8.00), and for re-recording each mark or brand the sum of four dollars (\$4.00)."

CHAPTER 7—INSPECTORS AND DETECTIVES

Section 46-704. Compensation.

46-707. Compensation for animals killed.

46-702. (3310) Repealed.

Repeal

This section (Sec. 2971, Pol. C. 1895), relating to bonds and oaths of stock inspectors and detectives, was repealed by

Sec. 51, Ch. 177, Laws 1965. For new provisions relating to bonds for state officers and employees, see sec. 6-105 et seq.

46-704. (3312) Compensation. The stock inspectors and detectives are under the exclusive control and direction of the commission, and must be paid for their services such sums as may be agreed upon by the commission, but in no case must they receive any mileage.

History: En. Sec. 2973, Pol. C. 1895; re-en. Sec. 1799, Rev. C. 1907; re-en. Sec. 3312, R. C. M. 1921; amd. Sec. 91, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "commission" for "board" in two places.

46-707. (3315) Compensation for animals killed. The value of the animal so taken and killed shall be determined by three disinterested parties living in the vicinity where the animal is seized, and the tender of the valuation so made to the owner shall be full compensation on account of the loss of said animal. All sums of money disbursed as herein provided shall be paid out of the livestock commission moneys in the earmarked revenue fund, and whenever possible the dead bodies of the animals killed shall be disposed of for cash, and the proceeds turned into said fund.

History: En. Sec. 2975, Pol. C. 1895; re-en. Sec. 1802, Rev. C. 1907; re-en. Sec. 3315, R. C. M. 1921; amd. Sec. 92, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "livestock commission moneys in the earmarked revenue fund" in the second sentence for "livestock commission fund."

CHAPTER 8—INSPECTION OF LIVESTOCK BEFORE REMOVAL FROM COUNTY

Section 46-801. Inspection of livestock before removal from county.

46-802. Duties of state stock inspectors and deputy stock inspectors—Montana livestock commission authorized to make rules and regulations.

46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds.

46-804. Fees for inspection and livestock transportation permit.

46-806. Penalties for violations of act.

46-809. Order requiring sheep removal permits—petition by sheep raisers.

46-810. Permit required for removal of sheep after order—violation as misdemeanor.

46-811. Form and issuance of permits—fee.

46-812. Publication of notice of sheep removal permit order.

46-813. Removal of permit requirement.

46-801. Inspection of livestock before removal from county. (1) to (5). * * * [Same as parent volume.]

(6) (a) to (g). * * * [Same as parent volume.]

(7) Except as provided for in section [subsections] 6 (a) and 6 (b) of this act [section], nothing contained in this chapter shall authorize or

permit any person to remove or cause to be removed any animal or animals from any county in this state to a location outside of the state of Montana on the hoof, or by any means or manner whatsoever, unless such animal or animals shall have been inspected for brands by a state stock inspector or deputy state stock inspector and certificate for such inspection shall have been issued in connection with and for the purpose of such transportation or removal as in this act provided.

(8) It shall be the duty and responsibility of any person in possession of livestock to secure such inspection of livestock as provided in this chapter before any livestock shall leave the state of Montana.

History: En. Sec. 1, Ch. 59, L. 1943; amd. Sec. 1, Ch. 176, L. 1945; amd. Sec. 1, Ch. 210, L. 1947; amd. Sec. 1, Ch. 110, L. 1949; amd. Sec. 1, Ch. 184, L. 1953; amd. Sec. 1, Ch. 142, L. 1957; amd. Sec. 1, Ch. 9, L. 1961; amd. Sec. 1, Ch. 54, L. 1969.

Amendments

The 1969 amendment added subsections (7) and (8).

46-802. Duties of state stock inspectors and deputy stock inspectors—Montana livestock commission authorized to make rules and regulations. It shall be the duty of state stock inspectors and deputy state stock inspectors, upon the application of the owner of any such animal referred to in section 46-801, or the duly authorized agent of such owner, to inspect all such animals intended for removal or shipment as in this act provided, and to issue his certificate of inspection therefor, if it shall appear with reasonable certainty that the applicant is the owner of such animal or has the lawful right to the possession thereof.

The inspection herein provided for shall include such examination of the animal and all marks and brands thereon as to identify the same. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the animal or of the applicant for inspection, the class of the animal as specified in section 46-801, the marks and brands, if any, upon the animal, and such other information and upon such form of certificate as the livestock commission may from time to time require. One (1) copy of the certificate shall be retained by the inspector, one (1) copy thereof shall be furnished by the inspector to the owner or shipper of the animal, and one (1) shall be filed by the inspector with the secretary of the livestock commission at Helena, Montana, within five (5) days.

If it shall appear with reasonable certainty that the applicant is the owner of such animals or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors or any sheriff or deputy sheriff, upon application of an owner or his agent of any such animal or animals to be consigned and delivered directly to a licensed livestock market located in another county of the state, or delivered directly to a shipping point duly approved by the Montana livestock commission where a livestock inspector is available for inspection, in an adjoining county, shall issue to such person a separate market consignment permit or transportation permit for each owner when the owner, or

owners, or their duly authorized agents sign such permit certifying the brands, description and destination of such animals. The market consignment permit or transportation permit shall be made in triplicate, shall specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the animal or animals and the name and address of the person actually transporting the animal or animals if different than the owner, the kind of animal or animals, the marks and brands, if any, upon the animal or animals, a description of the vehicle or vehicles to be used to transport such animal or animals to include the license number of such vehicle or vehicles and such other information and upon such form of permit as the livestock commission may from time to time require. Any such permit so issued shall be good for shipment within thirty-six (36) hours from date and time of issue; provided, however, that permits not used within this time limitation must be returned to the issuing officer to be canceled and to release permittee from performance. One copy of such permit shall be retained by the inspector or sheriff's office, one copy shall be filed by the inspector or sheriff's office with the secretary of the livestock commission at Helena, Montana within five (5) days of the date of issue, and one copy shall be furnished by the inspector or sheriff's office to the owner or shipper of the animal or animals which such copy of the permit shall accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the animal or animals are delivered.

The Montana livestock commission is hereby authorized to make such rules and regulations as shall be deemed necessary to carry out the provisions of this act.

History: En. Sec. 2, Ch. 59, L. 1943; amd. Sec. 2, Ch. 184, L. 1953; amd. Sec. 2, Ch. 142, L. 1957; amd. Sec. 1, Ch. 35, L. 1969.

Amendments

The 1969 amendment inserted "duly approved * * * available for inspection" after "shipping point" in the third paragraph and added the last paragraph.

46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds. All state stock inspectors inspecting any livestock, either before or after shipment or removal from any county in this state, shall, in addition to the powers granted them by law, possess the further authority to inspect and seize either at the point of shipment or destination or en route any livestock, or proceeds thereof, which said inspector may have good reason to believe is stolen, or upon which brands have been altered or obliterated, or which does not conform to the description contained on the tally sheet furnished by the shipper thereof or to the description contained in any certificate of inspection issued before shipment or removal of such livestock.

Upon taking possession of any such livestock in the exercise of the authority granted by this act, the state stock inspector may retain same in his possession for not to exceed fifteen (15) days for the purpose of making further investigation relative to its ownership, or may either at once or at any time within said period of fifteen (15) days sell said livestock at

any licensed livestock market, or in the open market, for the best available price and remit the proceeds, less the cost of keeping and sale, to the livestock commission together with a full description of the animal sold, giving marks and brand, if any, and a statement of the reason for the seizure and sale thereof. Said proceeds shall be deposited by the livestock commission with the state treasurer and credited to the agency fund, where it shall be subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock.

History. En. Sec. 3, Ch. 59, L. 1943; amd. Sec. 108, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted

"agency fund" for "stock estray fund" in the last sentence of the second paragraph; and substituted "for moneys arising from the sale of stray stock" for "against said fund" at the end of the section.

46-804. Fees for inspection and livestock transportation permit. (a)

For the service of inspection herein provided for before removal from county, the inspector making such inspections shall receive twenty-five cents (25¢) per head for twelve (12) head or less, or three dollars (\$3.00) for from twelve (12) head to thirty (30) head and shall receive ten cents (10¢) per head for each animal over thirty (30) head; for the issuance of a market consignment permit or transportation permit herein provided for before removal from county, the inspector, sheriff or deputy sheriff issuing such permits shall receive twenty-five cents (25¢) for each permit issued for twelve (12) head or less; fifty cents (50¢) for each permit for twelve (12) to thirty (30) head and one dollar (\$1.00) for each permit issued for over thirty (30) head and shall receive in addition thereto his necessary actual expenses, to be paid by the owner thereof or the person for whom the inspection is made or permit issued. All such inspection and permit fees and expenses shall be collected by the inspector, sheriff or deputy sheriff making the same at the time of inspection or issuance of permit and all such fees and expenses collected by a deputy state stock inspector, sheriff or deputy sheriff shall be retained by him and all such fees and expenses collected by a state stock inspector shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission.

(b) For the service of inspection herein provided for before any such animal is sold or offered for sale at any licensed public market, the state stock inspector making such inspection shall receive (1) twenty cents (20¢) per head for any such animal originating within the county in the state in which such market is maintained, or transported under a market consignment permit, and (2) ten cents (10¢) per head for any such animal previously inspected before removal from county as herein provided. All such fees to be paid by the owner thereof or by the person for whom the inspection is made. For inspecting any such animal before same is removed from the premises of such licensed public market the state stock inspector making such inspection shall receive ten cents (10¢) per head from the owner thereof or the person for whom the inspection is made. All such fees for inspection at such market shall be collected by the state stock inspector making the inspection at the time

such inspection is made and shall be sent by him to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission.

(c) A question or doubt having arisen as to the intention of the legislature and policy of the state concerning the disposition of inspection fees and expenses collected by the state stock inspectors of the state of Montana for the inspection of livestock, it is hereby declared to be the policy of this state and the intent of the said twenty-eighth legislative assembly of the state of Montana that all such inspection fees and expenses be paid to the livestock commission for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the livestock commission, and that said state stock inspectors shall be paid for their services and receive for their expenses only such sums as shall be agreed upon by the livestock commission of the state of Montana and fixed and determined by the state board of examiners.

History: En. Sec. 4, Ch. 59, L. 1943; amd. Sec. 1, Ch. 106, L. 1949; amd. Sec. 3, Ch. 184, L. 1953; amd. Sec. 3, Ch. 142, L. 1957; amd. Sec. 93, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subds. (a), (b) and (c), substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

46-806. Penalties for violations of act. (a) to (e). * * * [Same as parent volume.]

(f) Upon conviction of any person, firm, association, or corporation under this act, they shall be fined in a sum of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned in the county jail for a period of not more than six (6) months, or shall be punished by both such fine and imprisonment. Of all fines assessed and collected under the provisions of this act, fifty per cent (50%) thereof shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the livestock commission, and fifty per cent (50%) thereof shall be paid into the general fund of the county in which the conviction occurred.

History: En. Sec. 6, Ch. 59, L. 1943; amd. Sec. 4, Ch. 184, L. 1953; amd. Sec. 4, Ch. 142, L. 1957; amd. Sec. 94, Ch. 147, L. 1963.

Amendment

The 1963 amendment, in subd. (f), substituted "the earmarked revenue fund for the use of the livestock commission" for "the livestock commission fund."

46-809. Order requiring sheep removal permits—petition by sheep raisers. The livestock commission shall, within sixty (60) days of the filing of a petition signed by not less than fifty-one per cent (51%) of the sheep raisers owning not less than fifty-one per cent (51%) of the sheep in any county of the state requesting such action, make an order requiring a permit for the removal of any sheep from such county.

History: En. Sec. 1, Ch. 135, L. 1963.

Title of Act

An act to authorize the Montana livestock commission, upon petition of fifty-one per cent (51%) of the sheep raisers owning fifty-one per cent (51%) of the sheep in any county of the state, to re-

quire a permit for the removal of sheep from such county; providing for the form and issuance of such permits; providing that it shall be a misdemeanor to remove sheep from such a county without a permit; and providing for the manner of removing the requirement for such a permit.

46-810. Permit required for removal of sheep after order—violation as misdemeanor. From and after the date of any order of the livestock commission requiring a permit for the removal of sheep from any county, it shall be unlawful for any person to remove sheep from such county without a permit, and any person removing, authorizing or assisting in the removal of sheep from such county without a permit shall be guilty of a misdemeanor.

History: En. Sec. 2, Ch. 135, L. 1963.

46-811. Form and issuance of permits—fee. Before making any order under this act, the livestock commission must provide for the form of the permit and for issuance of such permits by livestock inspectors in the affected county. Fee for issuance of such permit shall be fifty cents (50¢).

History: En. Sec. 3, Ch. 135, L. 1963.

46-812. Publication of notice of sheep removal permit order. Before the effective date of any order made under this act, the commission must publish a notice containing the text and effective date of the order at least three (3) times in a paper of general circulation in the county and must cause a copy of the order to be mailed to every sheep raiser in the county.

History: En. Sec. 4, Ch. 135, L. 1963.

46-813. Removal of permit requirement. Upon receipt of a petition signed in the same manner as that specified in section 1 [46-809] of this act, requesting the removal of the permit requirement, the livestock commission shall, at its next meeting, make an order removing the permit requirement.

History: En. Sec. 5, Ch. 135, L. 1963.

CHAPTER 9—LIVESTOCK MARKETS—INSPECTION AND QUARANTINE —LICENSE AND BONDING

Section 46-904. State treasurer to hold proceeds of sales of stray stock.

46-911. License fee.

46-918.1. Operator of market to issue a receipt for livestock consigned.

46-901. (3328) Public markets—record books of sales of livestock.

References

Application of Baker Sales Barn, Inc.,
140 M 1, 367 P 2d 775, 778.

46-904. (3331) State treasurer to hold proceeds of sales of stray stock. When the provisions of this law shall have been fully complied with, and the money paid into the state treasury, two years after its receipt from the state livestock commission, the state treasurer shall be required to hold such money in the agency fund and his books shall show all information with respect to the sale and proceeds from each animal, in accordance with the published yearly report of the livestock commission, and such money shall be held by the state treasurer for the use and benefit of the rightful owner and claimant of such money for the period of one year, after which

it shall become state property and be placed to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 4, Ch. 96, L. 1907; Sec. 1818, Rev. C. 1907; re-en. Sec. 3331, R. C. M. 1921; amd. Sec. 106, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the

agency fund" for "a separate fund, to be known and designated as the 'stray stock fund'"; and substituted "earmarked revenue fund for the use of the livestock commission" for "livestock commission fund" at the end of the section.

46-907. Regulation of livestock markets.

Powers of Livestock Commission

The discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for

certificate to operate a livestock market is limited by section 46-909. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-908. Certificate to operate livestock market required, etc.

Governmental Licensing

Livestock markets are proper subjects for governmental licensing on the basis of convenience and necessity. Application of

Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 779. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-909. Hearing and procedure—limitation upon issuance of certificates.

Discretionary Power of Commission

This section limits the discretionary power of the livestock commission to determine whether or not a showing of convenience and necessity has been made by applicant for certificate to operate a livestock market. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

outside of Montana but it has effect only so far as the effects on existing markets in the state are concerned. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 782. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

Refusal of certificate of public convenience and necessity for operation of a livestock market was justified where evidence of the applicants showed only convenience as to distances, desirability for community and a border-line market economically. Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 781. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

Sufficiency of Evidence

In a proceeding to obtain a certificate of public convenience and necessity for operation of a livestock market, evidence may be introduced pertaining to markets

46-911. License fee. Every person operating a livestock market in this state shall be required to pay on May 1st, annually, a license fee of one hundred dollars (\$100.00) to the livestock commission. All fees provided for under this act shall be paid into the state treasury, and shall be placed by the state treasurer to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 6, Ch. 193, L. 1945; amd. Sec. 95, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the

earmarked revenue fund for use of the livestock commission" for "the livestock commission fund" at the end of the section.

46-917. Appeal by licensee or applicant for certificate, etc.

Review by District Court

On review provided in the district court under this section it is the duty of the court to examine the records made before the livestock commission to determine whether the commission acted "capri-

ciously, arbitrarily, or abused its discretion and whether it acted according to law." Application of Baker Sales Barn, Inc., 140 M 1, 367 P 2d 775, 780. (Dissenting opinions 140 M 1, 367 P 2d 775, 783, 784.)

46-918.1. Operator of market to issue a receipt for livestock consigned. Any person operating a "livestock market" as defined by section 46-906, R. C. M. 1947, which must have a certificate issued by the Montana livestock commission according to section 46-908, R. C. M. 1947, shall issue a receipt to any person, firm, partnership, or corporation selling livestock through a livestock market showing the number and description of livestock he has consigned for sale.

History: En. Sec. 1, Ch. 34, L. 1969.

Title of Act

An act requiring any person who operates a livestock market and obtains a certificate issued by the livestock commis-

sion according to section 46-908, R. C. M. 1947, to issue a receipt to any person, firm, partnership, or corporation selling livestock through a livestock market showing the number of livestock he has consigned.

CHAPTER 10—ESTRAYS—DISPOSAL OF

Section 46-1005. "Estray," as herein used, defined.

46-1006. Publication of description of estrays sold—disposition of proceeds remaining in state treasury.

46-1005. (3337) "Estray," as herein used, defined. An estray within the meaning of this act shall be any horse, mule, mare, gelding, colt, cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb, not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district wherein such animal may be found, by inquiry among reputable resident stock owners or freeholders therein; or any of such animals bearing a recorded brand but the owner of which brand cannot be located at or through the post office designated upon the records of the recorder of marks and brands, or which owner cannot be located by the stock inspector of the district where such estray is found by inquiry among reputable resident stock owners or freeholders therein; or any of the animals above enumerated which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district wherein said animal is found, by inquiry among reputable resident stock owners or freeholders therein.

History: En. Sec. 5, Ch. 34, L. 1915; re-en. Sec. 3337, R. C. M. 1921; amd. Sec. 1, Ch. 112, L. 1959; amd. Sec. 1, Ch. 37, L. 1963.

Repealing Clause

Section 2 of Ch. 37, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1963 amendment extended the section to include sheep and lambs.

46-1006. (3338) Publication of description of estrays sold—disposition of proceeds remaining in state treasury. A full description of estrays for which the proceeds derived from the sale remains in the hands of the treasurer unclaimed shall be published for the period of two (2) consecutive weekly or semimonthly or monthly issues next after May first of each year in not more than four (4) weekly or semimonthly or monthly publications in the state of Montana, said publications to be designated by the state livestock commission, and when such publication shall have been made and the proceeds from the sale of such animals shall have

remained in the hands of the state treasurer for a period of two (2) years, it shall be, by the treasurer, upon request of the state livestock commission, at once placed to the credit of the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 5, Ch. 2, L. 1911; amd. Sec. 1, Ch. 20, L. 1919; re-en. Sec. 3338, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1927; amd. Sec. 1, Ch. 95, L. 1941; amd. Sec. 107, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "earmarked revenue fund for the use of the livestock commission" for "state livestock commission fund" at the end of the section.

CHAPTER 11—HIDES OF SLAUGHTERED CATTLE—REGULATION— HIDE DEALERS' LICENSES

Section 46-1107. Hide dealer or buyers license fee—disposition of proceeds.

46-1107. (3350.8) Hide dealer or buyers license fee—disposition of proceeds. Every hide dealer or buyer shall pay to the livestock commission a license fee of five dollars (\$5.00) for each established place of business at which such hide dealer or buyer purchases or deals in hides, before engaging in, or conducting any business as such in the state of Montana, which license shall continue in force and effect for that calendar year. The moneys collected from such licenses shall be placed in the earmarked revenue fund, livestock commission account. The license must be renewed January 1 of each year commencing January 1, 1961.

History: En. Sec. 2, Ch. 151, L. 1929; amd. Sec. 2, Ch. 177, L. 1939; amd. Sec. 5, Ch. 44, L. 1961; amd. Sec. 4, Ch. 248, L. 1965.

Amendment

The 1965 amendment substituted "earmarked revenue fund, livestock commission account" for "livestock commission fund" at the end of the second sentence.

CHAPTER 14—LEGAL FENCES—LIABILITY OF OWNERS FOR TRESPASSING STOCK

Section 46-1411. Marking land and mining claims in national forest.

46-1413. Marking—right of action against trespassing stock.

46-1411. (3380) Marking land and mining claims in national forest. It shall be the duty of the owner, or the person holding possessory right, to all unfenced lands, or patented or unpatented mining claims, which said lands or patented or unpatented mining claims lie within the boundary of national forest reserves in the state of Montana, or lying on public ranges adjoining to any national forest reserve, to mark the boundaries thereof by substantial monuments that can be readily seen and observed so that such boundaries can be readily traced.

History: En. Sec. 1, Ch. 222, L. 1921; re-en. Sec. 3380, R. C. M. 1921; amd. Sec. 1, Ch. 31, L. 1963.

Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" in two places.

46-1413. (3382) Marking—right of action against trespassing stock. No person owning or possessing agricultural or grazing land, or patented or unpatented mining claims lying within said national forest reserves of this state or on the public range lying adjoining to any said national

forest reserve, the boundaries of which said lands are not marked as required by the provisions of this act, shall have any claim or cause of action or right of action against the owner of sheep, cattle or other livestock under the charge of a herder, for trespass committed by such livestock upon said land, and such shall be the rule regardless of whether the said livestock so trespassing strayed thereon on their own inclination and without being driven, or whether said livestock were herded or driven on said land; provided, that no person or persons can claim exemption for trespassing under the provisions of this section where such person or persons shall have actual knowledge of the boundary lines of any lands herein referred to; but in no event shall damages other than nominal damages be assessed against said trespass, unless the landowner or his duly authorized agent shall within six months after said trespass has been committed, give said trespasser written notice demanding a sum certain for damages sustained by reason of such trespass.

History: En. Sec. 3, Ch. 222, L. 1921; re-en. Sec. 3382, R. C. M. 1921; amd. Sec. 1, Ch. 78, L. 1927; amd. Sec. 2, Ch. 31, L. 1963.

Amendment

The 1963 amendment inserted "or unpatented" before "mining claims" near the beginning of the section; and substituted "livestock" for "sheep" before "so trespassing" and before "were herded or driven."

Repealing Clause

Section 3 of Ch. 31, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 31, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved February 2, 1963.

CHAPTER 19—BOUNTIES FOR KILLING WILD ANIMALS— KILLING DOGS INJURING LIVESTOCK

- Section 46-1901. Five per cent of county license money to be used for payment of bounty claims.
- 46-1903. Livestock commission to supervise destruction of predatory animals—co-operation with other agencies—advisory committee—administration of moneys.
- 46-1904. Disposal of proceeds from sale of skins, hides and specimens—presenting to museums.
- 46-1912. Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums.
- 46-1914. Levy of tax for purpose of paying for destruction of wild animals—limitation on levy.
- 46-1915. Penalty for fraudulent claims.

46-1901. (3414) Five per cent of county license money to be used for payment of bounty claims. For the purpose of providing for the payment of bounty claims five per cent of all license money collected by the several county treasurers of the state shall be paid over by said county treasurers to the state treasurer and shall by the latter be deposited in the earmarked revenue fund.

History: En. Sec. 3075, Pol. C. 1895; re-en. Sec. 1909, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1921; re-en. Sec. 3414, R. C. M. 1921; amd. Sec. 97, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "there is

hereby created a fund to be known as the state bounty fund which shall consist of" before "five per cent"; deleted "and said moneys" before "shall be paid over"; and substituted "the earmarked revenue fund" at the end of the section for "the state bounty fund."

46-1903. (3417.2) Livestock commission to supervise destruction of predatory animals—co-operation with other agencies—advisory committee—administration of moneys. (a) and (b). * * * [Same as parent volume.]

(c) Subject to the constitutional authority of the state board of examiners, the Montana livestock commission shall administer and expend for predatory animal extermination and control, in production of livestock and poultry in the state of Montana all the moneys that are or may be made available to it, including the moneys from the levy under section 9 of article XII of the Constitution of Montana and section 84-5214, enacted pursuant to such provision of the constitution, and all such moneys as are made available to said commission by appropriations made by the legislative assembly for predatory animal control by said commission. The commission shall expend said funds for predatory animal control by all effective means, including employment of hunters, trappers and other personnel, procurement of traps, poisons, equipment and supplies, and, also, for the payment of bounties within the sound discretion of the commission, as advised by the advisory agencies aforesaid, and responsive to the necessities of control in various areas of the state. The commission shall not consider or approve any claims against funds available to it, in excess of the amounts available in any biennium, and no warrants shall be issued or registered for any such claims whether for bounties or for any other purposes.

(d). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 73, L. 1923; amd. Sec. 1, Ch. 113, L. 1947; amd. Sec. 98, Ch. 147, L. 1963.

Amendment

The 1963 amendment in the first sentence of subsection (c) deleted "shall have, and it is hereby invested with control and supervision of the state bounty fund,

and it" which followed "Montana livestock commission" and deleted the words "in said fund" which followed the words "moneys that are or may be made available to it"; and in the last sentence of subsection (c) deleted the words "said state bounty fund, or against additional" which followed the words "claims against."

46-1904. (3417.3) Disposal of proceeds from sale of skins, hides and specimens—presenting to museums. All furs, skins and specimens, taken by hunters or trappers, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the earmarked revenue fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charges to any state museum or institution.

History: En. Sec. 3, Ch. 73, L. 1923; amd. Sec. 99, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "whose

salaries may be paid in whole or in part out of the fund herein created" which followed "hunters or trappers"; and substituted "earmarked revenue fund" for "bounty fund."

46-1912. (3417.11) Use of funds remaining after payment of bounties—sale of furs, skins and specimens—presentation to museums. If, at the end of any bounty paying season, there shall be a surplus of moneys available for the administration of Chapter 19, Title 46, R.C.M. 1947, such surplus may be used to hire salaried hunters and trappers to hunt and

trap predatory animals and to purchase and supply poison to be used for a poison campaign on predatory animals.

All furs, skins and specimens, taken by hunters or trappers, whose salaries may be paid in whole or in part out of such moneys, shall be sold by the livestock commission, and the proceeds from such sales shall be credited to the earmarked revenue fund, the same to be used in the further carrying out of the provisions of this act, provided that any specimens so taken may be presented, free of charge to any state museum or institution.

History: En. Sec. 8, Ch. 109, L. 1925; amd. Sec. 100, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "of moneys available for the administration of

Chapter 19, Title 46, R.C.M. 1947" for "in the state bounty fund" in the first paragraph; and in the second paragraph substituted "such moneys" for "the fund herein created" and "earmarked revenue fund" for "bounty fund."

46-1914. (3417.13) Levy of tax for purpose of paying for destruction of wild animals—limitation on levy. The department of state whose duty it is to fix tax levies, shall annually prescribe the levy recommended by the livestock commission to be made against livestock of all classes, for the purpose of paying for the destruction of wild animals killed within the state, which tax in any one year shall not exceed one and one-half ($1\frac{1}{2}$) mills on a dollar upon the assessed valuation of such livestock, and such moneys so received shall be used and applied only to the payment of claims for the destruction of wild animals and to the administration of the provisions of this act, approved by the livestock commission, and the moneys received for the taxes so levied shall be transmitted annually with other taxes for state purposes to the state treasurer by the county treasurer of each county, and when received by the state treasurer shall be placed to the credit of the earmarked revenue fund, and such moneys shall thereafter be paid out on claims approved as aforesaid, in accordance with the law governing the payment of claims.

History: En. Sec. 10, Ch. 109, L. 1925; amd. Sec. 24, Ch. 97, L. 1961; amd. Sec. 101, Ch. 147, L. 1963.

Amendment

The 1963 amendment omitted a former first sentence which read: "There is hereby created a fund, to be known as

the 'bounty fund'"; deleted "The tax commission, or" at the beginning of the present text; substituted "earmarked revenue fund" for "bounty fund" near the end of the section; and deleted "and all moneys in said fund are hereby appropriated for such purposes" at the end of the section.

46-1915. (3417.14) Penalty for fraudulent claims. Any person or persons who shall patch up any skin or scalp, or who shall present any punched or patched skin or scalp, or who shall bring in any skin or skins from other states or territory, with the intent to obtain the bounty on the same fraudulently, or any officer who shall sign any certificate herein provided for without first counting the skins and examining the same to determine the kind of skins, and to see that the skin from the scalp or head is properly severed and preserved as hereinbefore provided or shall evade or violate any provision of any law of the state of Montana relative to bounties or bounty claims, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding one

thousand dollars (\$1,000.00), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment, and that two-thirds of the fine, if the same be collected, or can be collected, shall be given to the informer, and the balance be deposited in the earmarked revenue fund and used for the administration of this act.

History: En. Sec. 11, Ch. 109, L. 1925; amd. Sec. 102, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "de-

posited in the earmarked revenue fund and used for the administration of this act" for "converted into the state bounty fund" at the end of the section.

CHAPTER 20—IMPOUNDING LIVESTOCK OR DOMESTIC ANIMALS

46-2001. (5175) Impounding animals—duties of cities and towns.

Cross-Reference

Livestock running at large in emergency

road construction areas, secs. 32-319 to 32-321.

CHAPTER 21—SHEEP—PROTECTION FROM PREDATORY ANIMALS—TAX

Section 46-2102. County commissioners may require per capita license fee on sheep.
46-2104. Duty of county commissioners—petition of sheep owners.

46-2102. County commissioners may require per capita license fee on sheep. To defray the expense of such protection the board of county commissioners of any county shall have the power to require all owners or persons in possession of any sheep, coming one year old or over, in the county on the regular assessment date of each year to pay a license fee of not exceeding fifteen cents (15¢) per head of sheep so owned or possessed by him in the county; provided that all owners or persons in possession of any sheep, coming one year old or over, coming into the county after the regular assessment date and subject to taxation under the provisions of section 84-6008 shall also be subject to payment of the license fee herein prescribed. Upon the order of the board of county commissioners such license fees may be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor. Said license fees shall be payable to and collected by the county treasurer, and when so levied, shall be a lien upon the property, both real and personal of the licensee. In case the person against whom said license fee is levied owns no real estate against which said license fee is or may become a lien, then said license fee shall be payable immediately upon its levy and the treasurer shall collect the same in the manner provided by law for the collection of personal property taxes which are not a lien upon real estate. When collected, said fees shall be placed by the treasurer in the predatory animal control fund and the moneys in said fund shall be expended on order of the board of county commissioners of the county for predatory animal control only. The word "owners" or "persons" shall include natural persons, copartnerships, corporations, trusts and estates.

History: En. Sec. 2, Ch. 206, L. 1943; amd. Sec. 1, Ch. 123, L. 1949; amd. Sec. 1, Ch. 87, L. 1957; amd. Sec. 1, Ch. 87, L. 1965.

Amendment

The 1965 amendment increased the maximum license fee specified in the first sentence from ten to fifteen cents per head.

46-2104. Duty of county commissioners—petition of sheep owners. In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for such program and its incidents as made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least fifty-one per cent (51 %) of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such board shall establish the predatory animal control program, and cause said licenses to be secured and issued and the fees collected for the following year in such amount, not exceeding the limits of fifteen cents (15¢) per head of sheep as shown by said assessment rolls, as will defray the cost of administering the program so established. The license fee determined and set by the board, within said limits, shall remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least fifty-one per cent (51 %) of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee, in which event the program shall by order of the board of county commissioners be disestablished and the license fee shall not be further levied. If the resident owners of at least fifty-one per cent (51 %) of the sheep in the county either (a) petition for an increase in the license fee, subject always to the maximum limitation of fifteen cents (15¢) per head of sheep, or (b) petition for a decrease in the license fee then in force, the board of county commissioners shall upon receipt of any such petition fix a new license fee to continue from year to year and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year.

History: En. Sec. 4, Ch. 206, L. 1943; amd. Sec. 1, Ch. 24, L. 1949; amd. Sec. 2, Ch. 87, L. 1957; amd. Sec. 2, Ch. 87, L. 1965.

Amendment

The 1965 amendment increased the maximum license fee specified near the end of the second sentence and in clause (a) of the final sentence from ten to fifteen cents per head.

CHAPTER 23—GRASS CONSERVATION—GRAZING DISTRICTS

Section 46-2305. Secretary—compensation.

46-2306. Compensation of members—auditing and payment of claims.

46-2331. Fees may be imposed by commission against districts.

46-2305. Secretary—compensation. The commission shall select and appoint a secretary at a salary in such amount as may be specified by the legislative assembly in the appropriation to the grass conservation commission. If the legislative assembly does not specify the maximum

salary of the secretary, it shall be fixed by the commission after approval by the board of examiners. Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The secretary shall be the executive officer of the commission and shall be controlled and directed by the rules and regulations established by the commission from time to time and applicable to the duties of his office.

History: En. Sec. 5, Ch. 208, L. 1939; amd. Sec. 1, Ch. 13, L. 1949; amd. Sec. 1, Ch. 124, L. 1953; amd. Sec. 2, Ch. 257, L. 1955; amd. Sec. 1, Ch. 24, L. 1967; amd. Sec. 3, Ch. 237, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 24 and once by Ch. 237. Chapter 24 was approved February 10, 1967, and Ch. 237 was approved March 1, 1967. Since the amendments are irreconcilable, the text of Ch. 237 is used above.

Amendments

Chapter 24, Laws of 1967, increased the maximum salary of the secretary of the grass conservation commission from \$500 per month to \$10,000 per year.

Chapter 237, Laws of 1967, substituted the latter part of the first sentence, beginning with "in such amount," for a clause fixing the secretary's maximum salary at \$500 per month; inserted the second and third sentences; and deleted a final sentence providing for the commission to fix the secretary's salary.

46-2306. Compensation of members—auditing and payment of claims.

The members of the commission shall receive no compensation for their services other than the actual amount of traveling expenses actually incurred in respect to the performance of their official duties in attendance at regular or special meetings of the board and ten dollars (\$10.00) per diem for each day actually in attendance at such board meetings. The per diem of each member of the board shall be limited to not exceed the amount of five hundred dollars (\$500.00) per year, such per diem and expenses to be audited, allowed and paid as herein provided.

The commission shall audit all claims, accounts or bills for expenses, per diem, or expenditures incurred by it or its employees. If the commission approves them they shall be processed as provided by law and paid from the moneys of the Montana grass conservation commission in the earmarked revenue fund; provided that the board may by resolution authorize the secretary to audit and certify all expenses, salaries, and expense accounts of the commission, or its employees, and such audit shall be made a part of the commissioner's report as provided in section 2 [82-4002] of this act.

History: En. Sec. 6, Ch. 208, L. 1939; amd. Sec. 1, Ch. 61, L. 1945; amd. Sec. 25, Ch. 97, L. 1961; amd. Sec. 155, Ch. 147, L. 1963; amd. Sec. 15, Ch. 93, L. 1969.

Amendments

The 1963 amendment substituted "moneys of the Montana grass conservation commission in the earmarked rev-

enue fund" for "state grass conservation fund" in the second sentence of the second paragraph.

The 1969 amendment substituted "as provided in section 2 of this act" for "to the governor, a copy of which shall be sent to all state districts coming under the provisions of this act" at the end of the second paragraph.

46-2330. Repealed.

Repeal

This section (Sec. 28, Ch. 208, L. 1939), relating to the state grass conservation

fund, was repealed by Sec. 242, Ch. 147, Laws 1963.

46-2331. Fees may be imposed by commission against districts. The state grass conservation commission shall have authority and right to impose such fees against the several state grazing districts of the state of Montana and in an amount not in excess of ten cents (10¢) per animal unit based upon the number of animal units per year for which the district grants permits, to defray any or all expenses created by the state grass conservation commission, and said state grass conservation commission shall from such fees and collections pay one per cent (1%) of said fees and collections to the state treasurer to be placed in the general fund, and shall repay to the state treasurer of Montana any and all appropriations provided by the state of Montana for the establishment of this commission and the administration of this act when so collected. When such appropriation by the state of Montana is repaid, the balance of such funds shall be held in the earmarked revenue fund, to be expended by order and direction of the state grass conservation commission for the further administration of the commission, and thereafter said commission shall be maintained by funds obtained from the livestock fees hereinbefore provided. If any state district fails or refuses to pay such fee or fees on or before the first day of May of each year, and after such district shall have been provided with a full report from the commission of all moneys collected and expended by it for its fiscal year next preceding that date, the commission shall have authority to compel and levy, collection and payment by writ of mandate or other appropriate remedy against said state district.

History: En. Sec. 29, Ch. 208, L. 1939; amd. Sec. 1, Ch. 241, L. 1961; amd. Sec. 156, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "earmarked revenue fund" for "state grass conservation fund, herein created" in the second sentence.

CHAPTER 24—RENDERING OR DISPOSAL PLANTS—LICENSING —REGULATION

46-2412. Disposal of hides, etc.

Compiler's Notes

Sections 46-1101, 46-1108 to 46-1111, referred to in this section in the parent vol-

ume, were repealed by Sec. 7, Ch. 44, Laws 1961.

CHAPTER 27—COUNTY LIVESTOCK PROTECTIVE COMMITTEES

Section 46-2706. Discontinuing county livestock protective committee.

46-2706. Discontinuing county livestock protective committee. Upon receipt of a petition or petitions signed as provided in section 46-2701, the board of county commissioners shall discontinue said county livestock protective committee, provided, however, that such action in discontinuing said committee shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out, and further providing that no district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 6, Ch. 168, L. 1953;
amd. Sec. 2, Ch. 204, L. 1967.

Amendments

The 1967 amendment substituted "shall" for "may" before "discontinue"; and added "and further providing * * * indebtedness against it" at the end of this section.

CHAPTER 28—CATTLE PROTECTIVE DISTRICTS

- Section 46-2801. Formation of districts in two or more counties authorized—petition of cattle owners—declaration by county commissioners.
 46-2802. Selection of cattle protective committee members.
 46-2803. Powers and duties of protective committees.
 46-2804. Tax levy—deposit of proceeds.
 46-2805. Removal of area from protective district—discontinuance of district—levy saved.
 46-2806. Formation of county district authorized—petition of cattle owners—declaration by county commissioners.
 46-2807. Selection of cattle protective committee members.
 46-2808. Powers and duties of protective committees.
 46-2809. Tax levy—deposit of proceeds.
 46-2810. Discontinuance of district—levy saved.

46-2801. Formation of districts in two or more counties authorized—petition of cattle owners—declaration by county commissioners. A cattle protective district embracing all or parts of two or more counties may be formed upon the filing of petitions by the cattle growers of such counties with the boards of county commissioners of each county to be wholly or partially included in the district. Such petitions must be signed by at least fifty-one per cent (51 %) of the cattle owners owning fifty-five per cent (55 %) of cattle for the protection of which the district is to be formed residing within the area designated as part of the district in each of the counties affected. Upon receipt of such a petition each board of county commissioners must within thirty (30) days declare the designated portion of its county a part of such cattle protective district and the district shall be formed immediately upon the action of the last board of county commissioners to act.

History: En. Sec. 1, Ch. 181, L. 1963.

Title of Act

An act to authorize the creation and operation of cattle protective districts embracing all or portions of two or more

counties, providing for the appointment of district cattle protective committees, providing for the powers, duties and financing of such cattle protective districts.

46-2802. Selection of cattle protective committee members. Each county wholly or partially included in such district shall be entitled to three (3) members of the district cattle protective committee who shall be chosen in the same manner as members of county cattle protective committees under section 46-2701, R.C.M. 1947.

History: En. Sec. 2, Ch. 181, L. 1963.

46-2803. Powers and duties of protective committees. District cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of Chapter 27, Title 46, R.C.M. 1947.

History: En. Sec. 3, Ch. 181, L. 1963.

46-2804. Tax levy—deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury of one of the counties in the district, to be selected by the district cattle protective committee, in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 181, L. 1963.

46-2805. Removal of area from protective district—discontinuance of district—levy saved. Upon receipt of a petition or petitions signed in the same number and the same manner as the petition to form the district provided for in section 46-2801 of this act, a board of county commissioners shall remove the area in its county from the cattle protective district or the boards of county commissioners of all of the counties affected may discontinue the entire cattle protective district, provided, however, that such action in discontinuing said district or part of district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out, and further providing, that no district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 181, L. 1963; amd. Sec. 1, Ch. 204, L. 1967.

Amendments

The 1967 amendment substituted "shall"

for "may" before "remove the area"; added "and further providing * * * indebtedness against it" at the end of the section; and made a minor style change.

46-2806. Formation of county district authorized—petition of cattle owners—declaration by county commissioners. A cattle protective district embracing part of one county in the state of Montana may be formed upon the filing of a petition by cattle growers within said district with the board of county commissioners in said county. Such petition must be signed by at least fifty-one per cent (51 %) of the cattle owners owning fifty-five per cent (55 %) of the cattle for the protection of which the district is to be formed residing within the area designated. Upon receipt of such petition, the board of county commissioners must within thirty (30) days declare the designated portion of its county a cattle protective district and the district shall be formed immediately thereafter.

History: En. Sec. 1, Ch. 91, L. 1965.

Title of Act

An act relating to the formation of a cattle protective district within any

county in the state of Montana and providing for its formation and for its powers and duties, including organization, tax levy, and discontinuance.

46-2807. Selection of cattle protective committee members. Each cattle protective district shall be entitled to three (3) members, who shall

be chosen in the same manner as members of a county cattle protective committee under section 46-2701, R. C. M., 1947.

History: En. Sec. 2, Ch. 91, L. 1965.

46-2808. Powers and duties of protective committees. Such district cattle protective committees shall be organized and have the same powers and duties as the county cattle protective committees organized under the provisions of chapter 27, Title 46, R. C. M., 1947.

History: En. Sec. 3, Ch. 91, L. 1965.

46-2809. Tax levy—deposit of proceeds. Said district cattle protective committee may recommend to the board of county commissioners the levy of a tax in an amount not to exceed twenty-five cents (25¢) per head on all assessable cattle in the district on the first Monday of March and the board of county commissioners shall thereupon be empowered to levy such tax, to be collected as other taxes on personal property, and when collected to be deposited in the county treasury in a special fund to be known as the stockmen's special deputy fund, together with any other funds made available from county, state, federal or private sources for the purposes of this act.

History: En. Sec. 4, Ch. 91, L. 1965.

46-2810. Discontinuance of district—levy saved. Upon receipt of a petition or of petitions signed in the same number and in the same manner as the petition to form the district, as herein provided, the board of county commissioners shall discontinue the cattle protective district, provided, however, that such action in discontinuing said district shall not affect any levy made prior to the receipt of such petition or petitions, and the proceeds of any levy made shall be used for the purposes as in this act set out. No district or portion of such district shall be discontinued so long as there is any outstanding indebtedness against it.

History: En. Sec. 5, Ch. 91, L. 1965;
amd. Sec. 3, Ch. 204, L. 1967.

Amendments

The 1967 amendment substituted "shall" for "may" before "discontinue"; and added the last sentence.

TITLE 47—LOANS

- Chapter 1. Loans for use or exchange—loan of money, 47-124.
2. Consumer Loan Act, 47-210, 47-214.

CHAPTER 1—LOANS FOR USE OR EXCHANGE—LOAN OF MONEY

Section 47-124. Legal interest.

47-124. (7725) Legal interest. Except as otherwise provided by the Uniform Commercial Code: Unless there is an express contract in writing, fixing a different rate, interest is payable on all moneys at the rate of six per cent (6%) per annum after they become due on any instrument of writing, except a judgment, on an account stated, and on moneys lent or due on any settlement of accounts from the date on which the balance is ascertained, and on moneys received to the use of another and detained from him. In the computation of interest for a period of less than one (1) year, three hundred and sixty-five (365) days are deemed to constitute a year. [Effective January 1, 1965.]

History: En. Sec. 2585, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5211, Rev. C. 1907; re-en. Sec. 7725, R. C. M. 1921; amd. Sec. 1, Ch. 144, L. 1933; amd. Sec. 11-130, Ch. 264, L. 1963. Cal. Civ. C. Sec. 1917.

Amendment

The 1963 amendment inserted "Except as otherwise provided by the Uniform Commercial Code" at the beginning of the section.

47-125. (7726) Same—any rate not exceeding ten per cent, etc.

Retail Installment Sales Contracts

In a diversity action to recover the balance due on a note and conditional sales contract executed and delivered by defendants to a North Dakota corporation and assigned by it to plaintiff, where defendants contended that the rate of interest charged them pursuant to the Montana Retail Installment Sales Act, section 74-608 was 16.3%, which exceeded the maximum rate of 10% permitted by this section and constituted a special law regulating the rate of interest on money, proscribed by section 26, article V of the constitution, the federal court applied the abstention doctrine and postponed further

action until the issue was determined by the supreme court of Montana. *B-W Acceptance Corp. v. Torgerson*, 234 F Supp 214, 216.

Sale of Assets

Where plaintiffs advanced the money and purchased the assets of a business, and at the same time entered an agreement for future resale of a part of the business to defendant, the entire transaction was a sale and contract of sale, rather than a loan, so that the difference in sale prices was not interest subject to the usury statute. *Favero v. Wynaht*, 140 M 358, 371 P 2d 858, 867.

47-126. (7727) Penalty for usury—action to recover, etc.

References

Favero v. Wynaht, 140 M 358, 371 P 2d 858, 867.

CHAPTER 2—CONSUMER LOAN ACT

- Section 47-210. Rates and charges—refunds—past due amounts—excess charges, effect.
47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy.

47-210. Rates and charges—refunds—past due amounts—excess charges, effect. (a) Maximum rate of charge. Every licensee hereunder may contract for and receive, on any loan of money not exceeding one thousand dollars (\$1,000) in principal amount, charges at rates not in excess of twenty dollars (\$20) per year per one hundred dollars (\$100) on that part of the principal amount of the loan not exceeding three hundred dollars (\$300); sixteen dollars (\$16) per year per one hundred dollars (\$100) on that part of the principal amount of the loan exceeding three hundred dollars (\$300) but not exceeding five hundred dollars (\$500), and twelve dollars (\$12) per year per one hundred dollars (\$100) on that part of the principal amount of the loan in excess of five hundred dollars (\$500) but not exceeding one thousand dollars (\$1,000). Said charges shall be computed at the aforesaid rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. Said charges shall be added to the principal of the loan and shall not be discounted or deducted therefrom nor paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day shall be considered one-thirtieth of a month.

(b) to (f). * * * [Same as parent volume.]

History: En. Sec. 10, Ch. 283, L. 1959; amd. Sec. 1, Ch. 15, L. 1965.

Amendment

The 1965 amendment substituted "principal amount" for "amount" near the beginning of subsection (a); inserted "of the principal amount" before "of the loan" in three places in the first sentence of sub-

section (a); deleted from the end of the first sentence of subsection (a) the words "when the loan is made for a period of one year, and proportionately at these rates for a greater or lesser amount within said limits or for a greater or lesser period of time"; inserted the second sentence in subsection (a); and made minor changes in phraseology in subsection (a).

47-214. Insurance written with loans—types and limitation thereon—delivery of insurance policy. (a) No insurance of any kind shall be written by a licensee, or employee, affiliate or associate of the licensee in connection with any loan except as hereinafter provided.

(b) Insurance permitted under the provisions of this section shall be obtained through an insurance company authorized to conduct such business in Montana by a duly licensed agent or agency of this state. Premiums shall not exceed those fixed by law or current applicable manual rates. Insurance written, as authorized by this section, may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(c) Property insurance. When the principal amount of the loan exceeds three hundred dollars (\$300) exclusive of the portion thereof attributable to insurance premiums and charges, the licensee may require a borrower to insure tangible personal property offered as security against any substantial risk of loss, damage or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to

obtain such insurance in an amount greater than the amount of the loan or for a longer term.

(d) Credit life insurance. Subject to the laws of this state, credit life insurance may be provided at the expense of the borrower and may be written by a licensee upon the request of the borrower when the principal amount of the loan exceeds three hundred dollars (\$300) exclusive of the portion thereof attributable to insurance premiums and charges. If any loan shall include amounts advanced for insurance premiums and charges such loan shall not in any event exceed one thousand dollars (\$1,000).

(e) The insurance authorized by this section may be sold, obtained or provided by or through a licensee and the premium or identifiable charge for the insurance may be included in the principal amount of the loan; provided, however, that no licensee shall require a borrower to purchase such insurance from such licensee or from any particular agent, broker or insurance company as a condition precedent for the obtaining of a loan. Any gain or advantage to the licensee or any employee, affiliate or associate of the licensee from the sale, provision or obtaining of insurance as authorized by this section shall not be deemed to be additional charges or a violation of this act.

A licensee shall not require insurance under this section until any existing insurance of the same type has expired or has been canceled and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.

History: En. Sec. 14, Ch. 283, L. 1959; amd. Sec. 2, Ch. 15, L. 1965.

Amendment

The 1965 amendment substituted "except as hereinafter provided" at the end of subsection (a) for "where the principal amount thereof is three hundred dollars (\$300) or less, and such amount of three hundred dollars (\$300) shall not include any charge for interest, insurance or any other identifiable charge"; inserted sub-

section (d) and the first paragraph of subsection (e); and substituted "this section" for "this subsection" near the beginning of the second paragraph of subsection (e), formerly the second paragraph of subsection (c).

Effective Date

Section 3 of Ch. 15, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 12, 1965.

TITLE 48—MARRIAGE

Chapter 1. Marriage defined—how and by whom contracted and authenticated, 48-118.1, 48-142 to 48-151.

2. Annuling marriage, 48-202, 48-203, 48-207.

CHAPTER 1—MARRIAGE DEFINED—HOW AND BY WHOM CONTRACTED AND AUTHENTICATED

Section 48-118.1. Application for license.

48-142. Legislative intent—public policy.

48-143. Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages.

48-144. Application for marriage license—form.

48-145. Advice to license applicants of legislative intent.

48-146. License required for marriage—place of ceremony—county where license issued.

48-147. Applicants under influence of liquor or drug.

48-148. Applicants delinquent in support obligations.

48-149. Posting of notice of application—objections to marriage—hearing on objections—order refusing license—amendment of application—issuance without objection—waiting period.

48-150. Validity of foreign marriages.

48-101. (5695) What constitutes marriage.

Cross-Reference

Cause of action for breach of promise abolished, sec. 17-1202.

Common-law Marriage

In view of statute recognizing consensual or common-law marriage, presumption that man and woman deporting themselves as husband and wife have entered into lawful contract of marriage is itself proof of marriage, and is overcome as matter of law only when in light of proved facts reasonable men could no longer find in accordance with the presumed fact; presumption was not overcome despite fact that mother claimed a ceremonial marriage and produced no evidence of mutual consent to common-law

marriage. *Spradlin v. United States*, 262 F Supp 502.

Right of Consortium

The mutual rights which arise in the husband and wife upon marriage, termed contractual or legal rights, include rights which are embraced within the term consortium. *Duffy v. Lipsman-Fulkerson & Co.*, 200 F Supp 71, 73; *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

Under this section and section 36-101 a woman by her marriage obtains a contractual right to consortium. *Dutton v. Hightower & Lubrecht Constr. Co.*, 214 F Supp 298, 300.

48-102. (5696) Repealed.

Repeal

This section (Sec. 51, Civ. C. 1895), relating to the age of consent for marriage,

was repealed by Sec. 12, Ch. 232, Laws 1963.

48-111. (5705) Subsequent marriage—when illegal and void.

Voidness of Former Marriage

Under section 94-702 voidness of former marriage must have been declared by a court of competent jurisdiction; such a determination of voidness cannot be

made under this section by the person involved to avoid being charged with the crime of bigamy under sections 94-701 and 94-702. *State v. Crosby*, 148 M 307, 420 P 2d 431, 433.

48-113. (5707) Repealed.

Repeal

This section (Sec. 57, Civ. C. 1895), relating to marriages contracted outside

the state, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-117, 48-118. (5711, 5712) Repealed.**Repeal**

These sections (Secs. 72, 73, Civ. C.

1895), relating to marriage licenses, were repealed by Sec. 12, Ch. 232, Laws 1963.

48-118.1. Application for license. An application for a marriage license shall be filed at least five (5) days before a license shall be issued; provided, that, upon application of either of the parties to a proposed marriage, any judge of a district court may, upon satisfactory evidence being presented to him that either of the parties to the proposed marriage is dangerously ill, such illness being likely to result in death, or upon the request of the parents or guardian, if any, or upon any other circumstance which, in the opinion of the judge of the district court, warrants special dispensation may by order authorize the license to be issued at any time before the expiration of the said five (5) days; provided, further that such judge shall, before issuing such order, require that the parties making application for such marriage license shall be examined under oath, and shall give the reasons why such license should not be withheld by the clerk of the district court for the statutory period. Such order shall be delivered to the clerk of the district court issuing the license and by him retained as prima-facie evidence of his authority to issue the said marriage license within the five (5) day period.

History: En. Sec. 1, Ch. 71, L. 1961;
amd. Sec. 10, Ch. 232, L. 1963.

Amendment

The 1963 amendment added the second proviso to the first sentence.

48-118.2. Repealed.**Repeal**

This section (Sec. 2, Ch. 71, L. 1961), relating to applications for marriage

licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-121. (5715) Repealed.**Repeal**

This section (Sec. 76, Civ. C. 1895), relating to evidence required for marriage

licenses, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-134. Proof of age, etc.**Compiler's Notes**

Section 48-118, referred to in the first paragraph of this section in the parent

volume, was repealed by Sec. 12, Ch. 232, Laws 1963.

48-142. Legislative intent—public policy. It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

History: En. Sec. 1, Ch. 232, L. 1963.

Title of Act

An act relating to marriage; defining legislative intent; defining marriageable age; requiring the delivery of premarital information to applicants; providing for a uniform marriage application form; providing for the issuance of marriage licenses; limiting the issuance of licenses where applicants are under the influence of narcotic drug or alcohol or are failing to support lawful dependents; providing a

procedure for objection to the issuance of marriage licenses; defining the validity and invalidity of marriages performed in other states; amending section 48-118.1, R.C.M., 1947, to provide for testimony under the oath of applicants seeking a waiver of the waiting period between application for and issuance of a marriage license; prohibiting remarriage within six months after divorce; and repealing sections 48-102, 48-113, 48-117, 48-118, 48-118.2 and 48-121, R.C.M., 1947.

48-143. Persons capable of marriage—when consent of parent or guardian required—special authority for underage marriages. (1) Every male person who has attained the full age of eighteen (18) years or who has obtained the permission of the district judge as provided in subparagraph (3) and every female person who has attained the full age of sixteen (16) years or who has obtained the permission of the district judge as provided in subparagraph (3) shall be capable in law of contracting marriage if otherwise competent.

(2) If either of the contracting parties is between the ages of eighteen (18) and twenty-one (21) if a male, or between the ages of sixteen (16) and eighteen (18) if a female, no license shall be issued without the consent of his or her parents or guardian, or of the parent having the actual care, custody and control of said party, given before the clerk of the court under oath, or certified under the hands of such parents or guardian as aforesaid attested by two adult witnesses, and properly verified by affidavit (or affirmation) before a notary public or other official authorized by law to take affidavits, which certificate shall be filed of record in the office of the said clerk of court at the time of application for said license. If there is no guardian or parent having the actual care, custody and control of said party, then the judge of the district court in the county where the application is pending may, after hearing upon proper cause shown, make an order allowing the marriage of said party.

(3) A male under the age of eighteen (18) or a female under the age of sixteen (16) may lawfully contract to marry and obtain a marriage license if there is first procured the consent of the parent or guardian as provided in subparagraph (2) and if the district judge of the county wherein the application is made, after examining the parties under oath, shall decide that it is to the best interest of such applicant and of the established public policy of the state of Montana, and shall authorize the clerk of the court to issue the license in conformance with the other provisions of this act.

History: En. Sec. 2, Ch. 232, L. 1963.

48-144. Application for marriage license—form. The application for a marriage license shall be in form substantially as follows:

THIS IS A SWORN STATEMENT. IF YOU MAKE FALSE STATEMENTS, YOU MAY BE PROSECUTED FOR PERJURY OR FOR FALSE SWEARING.

State of Montana
County of _____

We, the undersigned, in accordance with statements hereinafter contained and the facts set forth herein, which we and each of us do solemnly swear are true and correct to the best of our knowledge and belief, do hereby make application to the _____ of _____ County, Montana, for a license to marry. We further swear that we may lawfully marry and that our application for a marriage license has not been rejected in any county in Montana (except under the circumstances stated below).

Signature of Male applicant _____

Signature of Female applicant _____

A certified copy of a birth certificate or other uncontrovertible evidence of age must be submitted for the examination of each applicant and of the clerk. A certified copy of each divorce decree, decree of annulment, and other decrees or orders relating to the custody, care or support of dependent children must also be furnished for examination.

From the Male Applicant

From the Female Applicant

Full name _____

Full name _____

Race or Color _____

Race or Color _____

Usual Residence _____

Usual Residence _____

Street address or R. F. D. No. _____

Street address or R. F. D. No. _____

City or town, county, state, country _____

City or town, county, state, country _____

When did your residence in this county begin? _____

When did your residence in this county begin? _____

Have there been any interruptions in your residence in this county since that date? _____

Have there been any interruptions in your residence in this county since that date? _____

Date of birth _____ Age _____
month day year last birthday

Date of birth _____ Age _____
month day year last birthday

Usual occupation _____

Usual occupation _____

Industry or business _____

Industry or business _____

Place of birth _____

Place of birth _____

Religious denomination _____
(not compulsory)

Religious denomination _____
(not compulsory)

Full name of FATHER _____

Full name of FATHER _____

Race or color _____

Race or color _____

Residence _____

Residence _____

Occupation _____

Occupation _____

Birthplace _____

Birthplace _____

Full name of MOTHER _____

Full name of MOTHER _____

Race or color _____

Race or color _____

Residence _____

Residence _____

Occupation _____

Occupation _____

Birthplace _____

Birthplace _____

Maiden name of MOTHER _____

Maiden name of MOTHER _____

Male applicant affirms this
is his _____ marriage.

number

Previous marriages were ended
by: _____

manner

date

place

Children by prior marriages _____

Are you presently in default
of a legal obligation to sup-
port lawful dependent(s)? _____

Are you under the influence
of intoxicating liquor or
narcotic drug? _____

Your blood relationship to
other applicant, if any? _____

If prior application rejected
in another county, state
place, reasons and date: _____

Female applicant affirms this
is her _____ marriage.

number

Previous marriages were ended
by: _____

manner

date

place

Children by prior marriages _____

Are you presently in default
of a legal obligation to sup-
port lawful dependent(s)? _____

Are you under the influence
of intoxicating liquor or
narcotic drug? _____

Your blood relationship to
other applicant, if any? _____

If prior application rejected
in another county, state
place, reasons and date: _____

Sworn and subscribed to before
me this _____ day of _____
_____ A.D., 19____

Signature

Title

Marriage to take place _____
date

place (city and county)

Application filed _____
date

License issued _____
date

History: En. Sec. 3, Ch. 232, L. 1963.

Future Address

Enter here exact future address
after marriage, if known _____

street address

city or town

state

48-145. Advice to license applicants of legislative intent. At the time of application for such license, the clerk of the district court shall give to each of the applicants (or mail to an applicant who completes his part of the application outside of the state) a card with the statement of legislative intent printed thereon. Such cards shall be procured by the clerk of the district court at the expense of the county and shall be in form substantially as follows:

MARITAL INFORMATION

Your marriage license will be issued to you under the provisions of Title 48 of the Montana statutes. For your information and advice, that title includes the following provision:

INTENT. It is the intent of this act to promote the stability and best interest of marriage and the family. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable, and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned.

History: En. Sec. 4, Ch. 232, L. 1963.

48-146. License required for marriage—place of ceremony—county where license issued. No Montana resident shall be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the district court of the county in which one of the parties has resided for at least five (5) days immediately prior to making application therefor.

A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

If both parties be nonresidents of the state, such license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of such persons is a nonresident of the county where such license is to issue, his part of the application may be completed sworn to (or affirmed) before the person authorized to accept such applications in the county and state in which he resides.

History: En. Sec. 5, Ch. 232, L. 1963.

48-147. Applicants under influence of liquor or drug. No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

History: En. Sec. 6, Ch. 232, L. 1963.

48-148. Applicants delinquent in support obligations. No license to marry shall be issued by any clerk of the district court if either of the applicants for a license is or has been failing to support lawful dependents when ordered to do so by a court having jurisdiction, unless a judge of a court of record after hearing shall determine that despite such failure said applicant is financially able to discharge the duty to support existing dependents and those resulting from the contemplated marriage and shall

authorize the clerk to issue the license. The judge shall have authority to require that the applicant post sufficient security to insure the performance of the support obligation to existing dependents.

History: En. Sec. 7, Ch. 232, L. 1963.

48-149. Posting of notice of application—objections to marriage—hearing on objections—order refusing license—amendment of application—issuance without objection—waiting period. (1) Immediately upon entering an application for a license, the clerk of the district court shall post in his office a notice giving the names and residences of the parties applying therefor, and the date of the application. Any parent, grandparent, child, or natural guardian thereof if a minor, brother, sister or guardian of either of the applicants for a license, or either of the applicants, or the county attorney, believing that the statements of the application are false or insufficient, or that the applicants or either of them are incompetent to marry, may file with the district court in the county in which the license is applied for, a petition under oath, setting forth the grounds of objection to the marriage and asking for an order requiring the parties making such application to show cause why the license should not be refused. Whereupon, said court, if satisfied that the grounds of objection are prima facie valid, shall issue an order to show cause as aforesaid, returnable as the court may direct, but not more than fourteen (14) days after the date of said order, which shall be served forthwith upon the applicants for such license residing in the state, and upon the clerk before whom such application has been made, and shall operate as a stay upon the issuance of the license until further ordered; if either or both of said applicants are nonresidents of the state said order shall be served forthwith upon said nonresident by publication one time in a newspaper published in the county wherein said application is pending, and by mailing a copy thereof to said nonresident at the address contained in the application.

(2) If, upon hearing, the court finds that the statements in the application are willfully false or insufficient, or that either or both of said parties are not competent in law to marry, the court shall make an order refusing the license, and shall immediately report such matter to the county attorney. If said falseness or insufficiency is due merely to inadvertence, then the court shall permit the parties to amend the application so as to make the statements therein true and sufficient, and upon application being so amended, the license shall be issued. If any party is unable to supply any of the information required in the application, the court may, if satisfied that such inability is not due to willfulness or negligence, order the license to be issued notwithstanding such insufficiency. The costs and disbursements of the proceedings under this section shall rest in the discretion of the court, but none shall be taxed against any county attorney acting in good faith.

(3) If there be no legal objection to said application for license within five (5) days of the application, the clerk of the district court shall issue a marriage license.

History: En. Sec. 8, Ch. 232, L. 1963.

48-150. Validity of foreign marriages. (1) All marriages which are valid by the law of the state or nation where at least one (1) of the parties was domiciled at the time of the marriage and where both intended to make their home thereafter are valid in this state.

(2) All marriages which are valid by the law of the state or nation where the marriage took place are valid in this state unless invalid under the laws of the state or nation where at least one (1) of the parties was domiciled at the time of marriage and where both intended to make their home thereafter.

(3) The courts of this state may refuse to give a particular effect to a marriage contracted in another state or nation if to do so would be contrary to a strong public policy of this state.

History: En. Sec. 9, Ch. 232, L. 1963.

Repealing Clause

Section 12 of Ch. 232, Laws 1963 read "Sections 48-102, 48-113, 48-117, 48-118, 48-118.2, and 48-121, R. C. M., 1947, are repealed."

48-151. Repealed.

Repeal

This section (Sec. 11, Ch. 232, L. 1963), relating to the waiting period after di-

vorce, was repealed by Sec. 1, Ch. 63, Laws 1967.

CHAPTER 2—ANNULLING MARRIAGE

Section 48-202. Causes for annulling marriages.

48-203. Actions therefor—when and by whom commenced.

48-207. Legitimacy of children unaffected by annulment—custody and support orders.

48-201. (5728) Void marriages.

Necessity for Judicial Declaration

In view of statute providing that either party to void marriage may have it declared so judicially, former statute making it unlawful to marry again until six months after a judgment of divorce meant

that marriage in violation thereof should be void only from time its nullity shall be declared so judicially. State ex rel. Angvall v. District Court, Thirteenth Judicial District, 151 M 483, 444 P 2d 370.

48-202. (5729) Causes for annulling marriages. A marriage may be annulled for any of the following causes, existing at the time of the marriage:

1. That the party in whose behalf it is sought to have the marriage annulled was under the age of majority, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of majority, such party for any time freely cohabited with the other as husband or wife.

2 to 6. * * * [Same as parent volume.]

History: En. Sec. 110, Civ. C. 1895; re-en. Sec. 3636, Rev. C. 1907; re-en. Sec. 5729, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1963. Cal. Civ. C. Sec. 82. Based on Field Civ. C. Sec. 54.

Amendment

The 1963 amendment substituted "age of majority" for "age of legal consent" or "age of consent" in two places in subd. 1.

48-203. (5730) Actions therefor—when and by whom commenced. An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

1. For causes mentioned in subdivision 1: By the party to the marriage who was married under the age of majority within two years after arriving at the age of majority; or by a parent, guardian, or other person having charge of such nonaged male or female, at any time before such married minor has arrived at the age of majority.

2 to 6. * * * [Same as parent volume.]

History: En. Sec. 111, Civ. C. 1895; re-en. Sec. 3637, Rev. C. 1907; re-en. Sec. 5730, R. C. M. 1921; amd. Sec. 1, Ch. 169, L. 1963. Cal. Civ. C. Sec. 83.

Amendment

The 1963 amendment substituted "age of majority" for "age of legal consent" or "age of consent" in three places in subd. 1.

48-204, 48-205. (5731, 5732) Repealed.

Repeal

These sections (Secs. 112, 113, Civ. C. 1895), relating to children of annulled

marriages, were repealed by Sec. 4, Ch. 169, L. 1963.

48-207. Legitimacy of children unaffected by annulment—custody and support orders. A judgment of nullity of marriage does not affect the legitimacy of children conceived or born before the judgment, and the judgment must so specify, and the court may during the pendency of the action, or at the time judgment is rendered or at any time thereafter make such order for the custody, care, education, maintenance and support of such children during their minority as may seem necessary or proper.

History: En. Sec. 3, Ch. 169, L. 1963.

"Sections 48-204 and 48-205, R.C.M., 1947, are repealed."

Repealing Clause

Section 4 of Ch. 169, Laws 1963 read

TITLE 49—MAXIMS OF JURISPRUDENCE

CHAPTER 1—MAXIMS OF JURISPRUDENCE

49-102. (8739) When the reason of a rule ceases, so should the rule itself.

Change in Trial Judges

Rule that appellate court will not ordinarily disturb findings of fact of trial court where there is conflict in evidence is not

applicable where deciding judge was not judge who heard testimony. *Kostbade v. Metier*, 150 M 139, 432 P 2d 382.

49-103. (8740) Where the reason is the same, the rule should be the same.

References

Duffy v. Lipsman-Fulkerson & Co., 200 F Supp 71, 74.

49-104. (8741) One must not change his purpose to the injury of another.

References

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

49-106. (8743) One must so use his own rights as not to infringe upon the rights of another.

References

State Highway Commission v. Biastoch Meats, Inc., 145 M 261, 400 P 2d 274;

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

49-108. (8745) Acquiescence in error takes away the right of objecting to it.

References

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

49-109. (8746) No one can take advantage of his own wrong.

Loss of Right of Survivorship

Where husband feloniously killed his wife, he did not acquire by right of survivorship her share of property held jointly with him, but took the property under a constructive trust, and when he thereafter committed suicide his heirs had no right to wife's share. In re *Cox' Estate*, 141 M 583, 380 P 2d 584.

was not in effect at time act occurred giving rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted premium on bond. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.

References

Cited in *Doull v. Wohlschlager*, 141 M 354, 377 P 2d 758, 765; *Brannon v. Lewis and Clark County*, 143 M 200, 387 P 2d 706; *Thisted v. Tower Management Corp.*, 147 M 1, 409 P 2d 813.

Surety's Liability

This statute was one ground for holding surety liable on bond, even though bond

surety liable on bond, even though bond was not in effect at time act occurred giving

49-113. (8750) He who takes the benefit must bear the burden.

Surety's Liability

This statute was one ground for holding

ing rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted premium on bond. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.

49-114. (8751) One who grants a thing is presumed to grant also whatever is essential to its use.

References

Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432.

49-115. (8752) For every wrong there is a remedy.

References

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

49-119. (8756) The law helps the vigilant, before those who sleep on their rights.

References

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

49-121. (8758) That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

References

Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432; *Thisted v.*

Tower Management Corp., 147 M 1, 409 P 2d 813.

49-135. (8772) Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

Contract of Sale

In vendor's action against subsequent bona fide purchaser to determine ownership and right to possession of an airplane, vendor was estopped to challenge sale by vendee by failing to record title document to avoid transfer tax, making no inquiry for a number of months about the plane, which he allowed vendee to have, even though the payments were due under the contract, and failing to make a diligent effort to recover the plane after

the payments became due. *Lakes v. Orley*, 148 M 325, 420 P 2d 151, 153.

Surety's Liability

This statute was one ground for holding surety liable on bond, even though bond was not in effect at time act occurred giving rise to liability, since surety company had been tardy in processing papers of party to be bonded and had accepted the premium on bond. *Lapke v. Hunt*, 151 M 450, 443 P 2d 493.

TITLE 50—MINES AND MINING

- Chapter 10. Strip coal mining—reclamation of lands, 50-1001 to 50-1017.
11. Dredge mining—preservation of lands, 50-1101 to 50-1114.

CHAPTER 4—REGULATION OF COAL MINING INDUSTRY— COAL MINING CODE

50-408, 50-409. (3454, 3455) Repealed.

- Repeal** coal mine scales, were repealed by Sec. 43, Ch. 99, Laws 1969.
Sections 50-408 and 50-409 (Secs. 10, 11, Ch. 120, L. 1911), relating to the testing of

CHAPTER 6—REGULATIONS FOR SALE AND MARKETING OF COAL

50-603. (3546.3) Repealed.

- Repeal** relating to the weight of coal, was repealed by Sec. 43, Ch. 99, Laws 1969.
Section 50-603 (Sec. 3, Ch. 104, L. 1927),

CHAPTER 10—STRIP COAL MINING—RECLAMATION OF LANDS

- Section 50-1001. Public policy stated.
50-1002. Contracts for reclamation purposes—bureau of mines to sue and be sued.
50-1003. Conservation agencies to co-operate with bureau of mines.
50-1004. Credit on taxes—inspection of mines—reports to state board of equalization.
50-1005. Declaration of policy.
50-1006. Definitions.
50-1007. Contract for reclamation or permit required for surface coal mining.
50-1008. Application for permit—security and fee—amended permits—without drawing land—extension of permit without additional fee.
50-1009. Restrictions on surface coal mining under permit.
50-1010. Inspection by commission.
50-1011. Performance bonds—other security—cancellation of bonds by surety—substitution of surety—operator to receive written notice of any violations—forfeiture of bond or security—reclaiming of land by commission—completion of reclamation by operator.
50-1012. Deposit of fees and forfeitures in general fund.
50-1013. Bond forfeiture proceedings—notice.
50-1014. Promulgation of rules and regulations—written record of commission hearings—appeal to district court—remand for additional evidence—review solely on record—appeal to supreme court.
50-1015. Inspector appointed by commission.
50-1016. Operation without a permit a misdemeanor—penalty—injunctive procedures.
50-1017. Co-operation with federal agencies authorized—technical and financial assistance.

50-1001. Public policy stated. It is hereby declared to be the public policy of the state of Montana:

The vast deposits of bituminous, subbituminous and lignite coal underlying the state of Montana are one of its most valuable natural resources and greatest assets. The development of these coal deposits will contribute greatly to the economic welfare and prosperity of the people of this state, in that such development will attract new industry to this state

and assist in the expansion of existing industry. It is the policy of this state that the development of these coal deposits be encouraged, and that such development be brought about at the earliest possible date and in a manner most beneficial to the people of this state.

Many of these coal deposits are susceptible to development by strip-mining methods, and, in fact, due to other factors certain of these deposits can be developed economically only by strip-mining methods. Any undesirable results from strip mining can be to a great extent prevented or avoided by a proper program of reclamation in those areas where strip mining has been conducted. In order to reduce any undesirable effects of the strip mining of coal and in order to minimize any pollution of the soil and streams of this state by strip mining of coal, and to return to useful production lands which have to be strip mined, and to preserve and enhance the natural beauty of this state, it is the policy of this state to provide for and encourage the reclamation of lands on which the strip mining of coal has been conducted.

History: En. Sec. 1, Ch. 245, L. 1967.

Title of Act

An act to provide for the reclamation of lands on which strip mining of coal has been conducted; to authorize the Montana bureau of mines and geology to

enter into contracts for the reclamation of lands on which strip coal mining has been conducted; authorizing a credit on coal mines license tax for one-half ($\frac{1}{2}$) of the amounts spent on land reclamation, and amending section 84-1303 R. C. M. 1947.

50-1002. Contracts for reclamation purposes—bureau of mines to sue and be sued. The Montana bureau of mines and geology is hereby authorized and directed to enter into contracts in the name of the state of Montana with strip coal mine operators which will provide for the reclamation of lands on which the strip mining of coal has been conducted by such operators. The Montana bureau of mines and geology is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any strip-mined land reclamation contract, and the bureau of mines and geology shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts.

History: En. Sec. 2, Ch. 245, L. 1967.

50-1003. Conservation agencies to co-operate with bureau of mines. All agencies of the state of Montana concerned with reclamation, soil or water conservation, recreation, fish, game, and wildlife, state parks, state forests, and state lands, shall co-operate with and assist the Montana bureau of mines and geology in carrying out and enforcing contracts for the reclamation of lands on which the strip mining of coal has been conducted.

History: En. Sec. 3, Ch. 245, L. 1967.

50-1004. Credit on taxes—inspection of mines—reports to state board of equalization. Any strip coal mine operator who shall enter into a contract with the Montana bureau of mines and geology providing for the reclamation of lands on which the strip mining of coal has been conducted, shall annually receive credit toward the payment of the coal mines

license tax provided for in chapter 13 of Title 84, R.C.M. 1947, in an amount equal to one-half ($\frac{1}{2}$) of the reasonable value of the reclamation work performed on such lands under such contracts during the preceding year.

The Montana bureau of mines and geology shall annually inspect each strip-mining operation for coal in this state, and shall, if the operator of such mine has entered into a contract for the reclamation of strip-mined lands, determine the reasonable value of all reclamation work performed by such mine operator during the preceding year. The bureau of mines and geology shall promptly after each annual inspection, report to the state board of equalization, the state treasurer, and the operator the reasonable value of reclamation work performed on strip-mined lands during the immediately preceding year by each strip-mine operator, and one-half ($\frac{1}{2}$) of the amount so reported shall be deducted from coal mines license tax due from such strip coal mine operator pursuant to the provisions of chapter 13 of Title 84, R.C.M. 1947.

History: En. Sec. 4, Ch. 245, L. 1967.

50-1005. Declaration of policy. It is declared to be the policy of this state to provide, after surface coal mining operations are completed, for reclamation of affected lands to encourage productive use including but not limited to: the planting of forests; the seeding of grasses and legumes for grazing purposes; the planting of crops for harvest; the enhancement of wildlife and aquatic resources; the establishment of recreational, home, and industrial sites; and for the conservation, development, management and appropriate use of all the natural resources of such areas for compatible multiple purposes, to aid in maintaining or improving the tax base, and protecting the health, safety and general welfare of the people, as well as the natural beauty and aesthetic values, in the affected areas of this state.

History: En. Sec. 1, Ch. 199, L. 1969. strip coal-mined lands and declaring a penalty.

Title of Act

An act to provide for the reclamation of

50-1006. Definitions. Wherever used or referred to in this act, unless a different meaning clearly appears from the context:

(1) "Reclamation for productive use" means conditioning areas affected by surface coal mining to make them suitable for any uses or purposes consistent with those enumerated in the statement of policy.

(2) "Overburden" means all of the earth and other materials which lie above natural deposits of coal, and also means such earth and other materials disturbed from their natural state in the process of surface coal mining.

(3) "Surface mining" relates to the mining of coal, by removing the overburden lying above natural deposits thereof, and mining directly from the natural deposits thereby exposed.

(4) "Operator" means any person, firm, association, co-operative, corporation, and department, agency, or instrumentality of the state, or any

governmental subdivision thereof engaged in and controlling a surface coal-mining operation.

(5) "Pit" means a tract of land, from which overburden has been or is being removed for the purpose of surface coal mining.

(6) "Final cut" means the last pit created in a surface coal-mined area.

(7) "High wall" means that side of the pit adjacent to unmined land.

(8) "Affected land" means the area of land from which overburden has been removed for surface mining of coal or upon which overburden or refuse has been deposited, or both.

(9) "Refuse" means all waste material directly connected with the cleaning and preparation of coal mined by surface coal mining.

(10) "Ridge" means a lengthened elevation of overburden created in the surface coal-mining process.

(11) "Peak" means a projecting point of overburden created in the surface coal-mining process.

(12) "Commission" means the Montana bureau of mines and geology, or such department, bureau, or commission as may lawfully succeed to the powers and duties of said commission.

(13) "Permit term" means a period of time beginning with the date upon which a permit is given for strip coal mining of lands under the provisions of this act, and ending with the expiration of the next succeeding three years.

History: En. Sec. 2, Ch. 199, L. 1969.

50-1007. Contract for reclamation or permit required for surface coal mining. It shall be unlawful, after January 1, 1970, for any operator to engage in surface coal mining, in an area where the overburden shall exceed ten (10) feet in depth, without first contracting for the restoration of the affected lands in accordance with the provisions of sections 50-1001, 50-1002, 50-1003, and 50-1004, R. C. M. 1947, or obtaining from the commission a permit so to do, in such form as is hereinafter provided.

History: En. Sec. 3, Ch. 199, L. 1969.

50-1008. Application for permit—security and fee—amended permits—withdrawing land—extension of permit without additional fee. (1) Any operator desiring to engage in surface coal mining, in an area where the overburden shall exceed ten (10) feet in depth, shall make written application to the commission for a permit. Application for the permit shall be made upon a form furnished by the commission, which form shall contain a description of the tract or tracts of land and the estimated number of acres thereof to be affected by surface coal mining by the applicant in the next succeeding three (3) years, which description shall include the section, township, range, and county in which the land is located and shall otherwise describe the land with sufficient certainty so that it may be located and distinguished from other lands, and a

statement that the applicant has the right and power by legal estate owned to mine by surface coal mining and to reclaim the land so described.

(2) Such application shall be accompanied by a bond or security to attach to the described lands from and after the time a permit is granted which shall meet the requirements of section 7 [50-1011] of this act; and a fee computed as follows: For an area of ten (10) acres or less to be affected during the permit term, a fee of twenty-five dollars (\$25) and an amount equal to the amount of seven dollars fifty cents (\$7.50) multiplied by the number of acres to be affected between two (2) and ten (10) acres, inclusive; for an area of more than ten (10) acres but not more than fifty (50) acres to be affected during the permit term, a fee of one hundred dollars (\$100) and an amount equal to the amount of three dollars fifty cents (\$3.50) multiplied by the number of acres to be affected between eleven (11) and fifty (50) acres, inclusive; for an area of more than fifty (50) acres to be affected during the permit term, a fee of two hundred seventy-five dollars (\$275) and an amount equal to the amount of two dollars fifty cents (\$2.50) multiplied by the number of acres to be affected in excess of fifty (50) acres. Upon the receipt of the application, a bond or security and all fees due from the operator, the commission shall issue a permit to the applicant which shall entitle him during the permit term to engage in surface coal mining on the land therein described.

(3) An operator desiring to have his permit amended to cover additional land may file an amended application with the commission. Upon receipt of the amended application, and such additional fee and bond or security as may be required under the provisions of this act, the commission shall issue an amendment to the original permit covering the additional land described in the amended application.

(4) An operator may withdraw any land covered by a permit, excepting affected land, by notifying the commission thereof, in which case the penalty of the bond or security filed by such operator pursuant to the provisions of this act shall be reduced proportionately.

(5) Where acreage for which a permit has been in effect is not mined, or where coal mining operations have not been completed thereon during the permit term, the permit as to such acreage shall be extended by the department on a year-to-year basis without payment of any additional fee.

History: En. Sec. 4, Ch. 199, L. 1969.

50-1009. Restrictions on surface coal mining under permit. Every operator to whom a permit is issued pursuant to the provisions of this act may engage in surface coal mining during the permit term upon the lands described in the permit upon the performance of and subject to the following requirements with respect to such lands:

(1) All ridges and peaks of land affected by surface coal mining within six hundred sixty (660) feet of existing right of way and which are visible from any public road maintained with public funds, public

building or cemetery that is being maintained in a usable condition, shall be graded to a rolling topography traversable by machines necessary for maintenance in accordance with planned use, with slopes having a grade no greater than the original grade of the overburden of that area prior to mining.

(2) The operator shall construct earth dams, where lakes may be formed, in accordance with sound engineering practices if necessary to impound water, provided the formation of the lakes or ponds will not interfere with underground or other mining operations.

(3) On all affected land which is to be afforested the operator shall construct reasonable access roads through the area.

(4) On all affected land which is to be seeded to pasture the operator shall wherever reasonable strike off all peaks or ridges to a minimum width of thirty-five (35) feet at the top.

(5) On all affected land which is to be used for crops including hay, the operator shall grade peaks and ridges and fill valleys in such manner that the reclaimed land will not have grades greater than the original grades of the overburden of the area prior to the coal-mining operation.

(6) Surface coal-mining operations that remove and do not replace the lateral support, unless mutually agreed upon by the operator and the adjacent property owner, shall not approach property lines, established right of way lines of any public roads, streets or highways closer than a distance equal to ten (10) feet plus one and one-half ($1\frac{1}{2}$) times the depth of the excavation, except where consolidated material or materials of sufficient hardness or ability to resist weathering and to inhibit erosion or sloughing exists in the high wall, in which case the distance from the property line or any established right of way line, unless mutually agreed, shall not be closer than a distance equal to ten (10) feet plus one and one-half ($1\frac{1}{2}$) times the depth from the natural ground surface to the top of the consolidated material or materials.

(7) The operator shall submit to the commission no later than the first day of September during each year of the permit term, a map in a form acceptable to the commission showing the location of the pit or pits by section, township, range, and county, with such other description as will identify the land which the operator has affected by surface coal mining during such permit term and has completed mining operations thereon, with a legend upon such map showing the number of acres of affected land.

(8) A reclamation plan and map acceptable to the commission shall be submitted by the operator not later than the first day of December following the first year of the permit term. The operator's reclamation plan and the commission's approval shall be based upon the advice and technical assistance of the state soil conservation committee, the state fish and game commission, the state forester, and other agencies or individuals having experience in foresting and reclaiming surface-mined lands with forest or agronomic or horticultural species, based upon

scientific knowledge from research into reclaiming and utilizing forest and agronomic species on surface coal-mined lands. The operator shall designate which parts of the affected land shall be reclaimed for forest, pasture, crop, horticultural, homesite, recreational, industrial, or other uses including food, shelter, and ground cover for wildlife and shall show the same by appropriate designation on the reclamation map.

(9) The operator shall sow, set out, or plant upon the affected land described in the reclamation plan and map or maps, seeds, plants, cuttings of trees, shrubs, grasses, or legumes as shall be approved in writing by the commission.

(10) All reclamation provided for hereunder shall be carried to completion by the operator prior to the expiration of three (3) years after termination of the permit term, except that no planting of any kind shall be required to be made within depressed haulage roads or final cuts or any other area where pools or lakes may be formed by rainfall or drainage runoff from adjoining land. Where natural weathering and leaching of any of such affected land fails to support plant growth at the end of three (3) years, the commission shall, at the request of the operator, extend the reclamation period from year to year for a period of five (5) years from the termination of the permit term on the land in question. If further extension of the reclamation period is necessary to accomplish acceptable reclamation, such extension shall be made at the discretion of the commission, or the commission shall declare forfeiture of the surety bond or security on such land not satisfactorily reclaimed; however, after the second seeding or planting of any affected area, the area shall be deemed reclaimed.

(11) If the operator is unable to acquire sufficient planting stock of desired tree species from state nurseries, or acquire such tree species elsewhere at comparable prices, the commission shall grant the operator an extension of time until planting stock is available to plant such land as originally planned, or shall permit the operator to select an alternate method of reclamation in keeping with the provisions of this act.

(12) Upon the application of the operator, the commission in its discretion may allow the modification of an approved reclamation plan, provided that justice requires the modification, and the modified plan will carry out the purposes of this act.

History: En. Sec. 5, Ch. 199, L. 1969.

50-1010. Inspection by commission. The commission, or its accredited representatives, may enter upon the lands of the operator at all reasonable times for the purpose of inspection, to determine whether the provisions of this act have been complied with.

History: En. Sec. 6, Ch. 199, L. 1969.

50-1011. Performance bonds—other security—cancellation of bonds by surety—substitution of surety—operator to receive written notice of any violations—forfeiture of bond or security—reclaiming of land by commission—completion of reclamation by operator. (1) Any bond

herein provided to be filed with the department by the operator shall be in such form as the commission shall prescribe, payable to the state of Montana, conditioned that the operator shall faithfully perform all requirements of this act and comply with all rules of the commission made in accordance with the provisions of this act. Such bond shall be signed by the operator as principal, and by a good and sufficient corporate surety, licensed to do business in Montana, as surety. The penalty of such bond shall be two hundred dollars (\$200) for each acre or portion thereof of land to be affected by surface coal mining in an area where the overburden shall exceed ten (10) feet in depth, for the ensuing permit term.

(2) In lieu of such bonds, the operator may deposit cash or government securities or both with the commission in an amount equal to that of the required surety bond on conditions as above prescribed. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this act. Such bond or security shall be in effect and subject to forfeiture in accordance with this act from and after the time a permit is granted by the commission until the mined acreages have been reclaimed, approved, and released.

(3) A bond filed as above prescribed shall not be canceled by the surety unless it shall give not less than ninety (90) days' notice to the commission, and in no event shall a bond be canceled on lands that at the time of cancellation have become affected lands under the provisions of this act.

(4) If the license to do business in Montana of any surety upon a bond filed with the commission pursuant to this act shall be suspended or revoked, the operator, within thirty (30) days after receiving notice thereof from the commission, shall substitute for such surety a good and sufficient corporate surety licensed to do business in Montana. Upon failure of the operator to make substitution of surety as herein provided, the commission shall have the right to suspend the permit of the operator until such substitution has been made.

(5) The commission shall give written notice to the operator of any violation of this act or noncompliance with any of the rules and regulations promulgated by the commission hereunder and if corrective measures, approved by the commission, are not commenced, or agreed to within ninety (90) days, the commission may proceed as provided in section 9 [50-1013] of this act to request forfeiture of the bond or security. The amount of forfeiture shall be two hundred dollars (\$200) for each acre or portion thereof of affected land. Such forfeiture shall fully satisfy all obligations of the operator to reclaim the affected land under the provisions of this act.

(6) The commission shall have the power to reclaim, in keeping with the provisions of this act, any affected land with respect to which a bond has been forfeited.

(7) Whenever an operator shall have completed all requirements under the provisions of this act as to any affected land, he shall notify the commission thereof. If the commission determines that the operator

has completed reclamation requirements and achieved results appropriate to the use for which the area was reclaimed, the commission shall release the operator from further obligations regarding such affected land and the penalty of the bond shall be reduced proportionately.

History: En. Sec. 7, Ch. 199, L. 1969.

50-1012. Deposit of fees and forfeitures in general fund. All fees and forfeitures collected under the provisions of this act shall be deposited in the general fund in the state treasury.

History: En. Sec. 8, Ch. 199, L. 1969.

50-1013. Bond forfeiture proceedings—notice. The attorney general, or his designated representative upon request of the commission, shall institute proceedings to have the bond of the operator forfeited for violation by the operator of any of the provisions of this act or for noncompliance with any lawful rule or regulation promulgated by the commission thereunder. Before making such request of the attorney general, the commission shall notify the operator in writing of the alleged violation or noncompliance and shall afford the operator the right to appear before the department at a hearing to be held in accordance with section 10 [50-1014] of this act. After the conclusion of the hearing, the commission shall either withdraw the notice of violation or shall request the attorney general to institute proceedings to have the bond of the operator forfeited as to the land involved.

History: En. Sec. 9, Ch. 199, L. 1969.

50-1014. Promulgation of rules and regulations—written record of commission hearings—appeal to district court—remand for additional evidence—review solely on record—appeal to supreme court. The commission may adopt and promulgate rules and regulations respecting the administration of the act. However:

(1) Whenever any operator appears at a hearing upon an alleged violation or noncompliance of this act, the commission shall prepare a written record of the hearing. All evidence, including records and documents in the possession of the commission of which it desires to avail itself in making its decision shall be offered and made a part of the record of the hearing;

(2) Any person aggrieved by any decision of the commission may have judicial review thereof by appeal, within thirty (30) days after the date of the decision of the commission, to the district court of the county in which the coal-mining property is located;

(3) Any party may move the court to remand the case to the commission to adduce additional specified and material evidence, if the party can show grounds for failure to adduce the evidence previously before the commission;

(4) The review by the district court shall be based solely on the record of the hearing before the commission. If the court finds that the decision of the commission is not supported by relevant, material, reliable,

probative, or substantial evidence, it shall modify the decision of the commission or reverse it for further hearing;

(5) Either the commission or the person aggrieved may appeal from the decision of the district court to the supreme court. The appeal to the supreme court shall be limited to a review of the record of the hearing before the commission and of the district court's review of that record.

History: En. Sec. 10, Ch. 199, L. 1969.

50-1015. Inspector appointed by commission. The chief administrative officer under this act shall be an inspector appointed by the commission who shall be responsible to the commission for carrying out its policies and directives in its administration of this act.

History: En. Sec. 11, Ch. 199, L. 1969.

50-1016. Operation without a permit a misdemeanor—penalty—injunctive procedures. (1) Any person required by this act to have a permit who engages in surface mining in an area where the overburden shall exceed ten (10) feet in depth, without previously securing a permit to do so as prescribed by this act, is guilty of a misdemeanor, and on conviction thereof shall be fined not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000). Each day of operation without the permit required by this act shall be deemed a separate violation.

(2) Authorized representatives of the commission shall by injunctive procedures, without bond or other undertaking, close down at once any operator found to be surface mining without a permit or in violation of the provisions of this act, or the rules and regulations promulgated thereunder. No liability whatsoever shall accrue to the commission or its authorized representative in closing down any operator pursuant to this section.

History: En. Sec. 12, Ch. 199, L. 1969.

50-1017. Co-operation with federal agencies authorized—technical and financial assistance. The commission shall have the authority to co-operate with and receive technical and financial assistance from the United States or any department, agency, or officer thereof, for any purposes relating to the reclamation of any affected lands.

History: En. Sec. 13, Ch. 199, L. 1969.

CHAPTER 11—DREDGE MINING—PRESERVATION OF LANDS

- Section 50-1101. Public policy.
 50-1102. Dredge mining defined.
 50-1103. Certain mining operations excluded.
 50-1104. State board of health to administer act—powers and duties—rules and regulations—court may require board to perform duty.
 50-1105. Act applicable to mining on any property within state—Permit required to conduct dredge-mining operation.
 50-1106. Application for permit to conduct dredge-mining operation—requirements of application—notice of application by publication—written protest to application—requirements for approval of application.

- 50-1107. Surety bond or cash deposit—permit limited to described land—permit not transferable.
- 50-1108. Land required to be returned to natural state.
- 50-1109. Settling ponds required.
- 50-1110. Inspection by board.
- 50-1111. Violation of act—termination of permit.
- 50-1112. Discharge of surety bond—forfeiture of bond.
- 50-1113. Misdemeanor—restoration period—protest by any party—penal provisions additional and cumulative.
- 50-1114. Appeal.

50-1101. Public policy. It is hereby declared to be the policy of the state of Montana to protect its lands, streams and watercourses from destruction by dredge mining and preserve the same for the enjoyment, use and benefit of all of the people, and that clear and unpolluted water in the streams, rivers and lakes of Montana suitable for recreational, domestic, industrial, commercial and agricultural purposes is in the public interest.

History: En. Sec. 1, Ch. 123, L. 1969. **Title of Act**

The Dredge Mining Regulation and
Land Preservation Act.

50-1102. Dredge mining defined. For the purposes of this act dredge mining shall mean mechanical operations that result in the recovery of minerals in or near a stream or riverbed, with the use of a dredge boat or sluice-washing plant, whether fed by bucket line as part of such dredge or by separate dragline, hydraulic pressure, vacuum, suction or any other supply capable of moving ten (10) cubic yards of earth or rock material per day.

History: En. Sec. 2, Ch. 123, L. 1969.

50-1103. Certain mining operations excluded. This act shall not be construed to include any mechanical operation primarily intended for open pit mining, strip coal mining, irrigation, extraction of gravel for construction and/or road-building purposes, or agricultural purposes.

History: En. Sec. 3, Ch. 123, L. 1969.

50-1104. State board of health to administer act—powers and duties—rules and regulations—court may require board to perform duty. (a) The state board of health is hereby designated the administrative agency of this act and shall have the power and duty to adopt rules and regulations for its administration in accordance with the intent and purposes thereof, and to employ personnel necessary to act upon its behalf and to carry out this law effectively.

(b) It shall be the duty of the board to enforce all of the provisions of this act. If the board fails to enforce such provisions, any citizen of this state may commence an action in the appropriate court requiring the board to perform its duty.

(c) The board may establish such rules and regulations as it deems necessary to define the terms and carry out the purposes of this act.

History: En. Sec. 4, Ch. 123, L. 1969.

50-1105. Act applicable to mining on any property within state—permit required to conduct dredge-mining operation. The requirements of this act shall be applicable to dredge-mining operations upon all property located within this state whether publicly or privately owned. It shall be unlawful for any person to conduct dredge-mining operations within this state without first obtaining a permit as herein provided.

History: En. Sec. 5, Ch. 123, L. 1969.

50-1106. Application for permit to conduct dredge-mining operation—requirements of application — notice of application by publication — written protest to application—requirements for approval of application.

(a) Before any person may conduct a dredge-mining operation within this state he shall file with the board an application for a permit upon a form provided by the board and shall pay an application fee of one hundred dollars (\$100) for each ten (10) acres or fraction thereof involved in such application. Such application shall include an accurate description of the land proposed to be dredged by legal subdivisions and shall specify the number of acres involved, and shall include a plan specifying how the operator intends to satisfy sections 8 and 9 [50-1108 and 50-1109] of this act.

(b) If any applicant for such dredge-mining operations is not the owner of the lands described in the application or any part thereof, the owner of such lands shall endorse approval upon the application. No permit shall be issued in the absence of such approval by the owner of lands described in the application.

(c) Within ten (10) days after filing of an application for a permit, the director on behalf of the board shall issue a notice specifying the date of filing, the lands and waters affected, the name and address of the applicant and stating that anyone desiring to protest the issuance of the permit may file a written protest within forty (40) days after the date of first publication of such notice. The director shall cause the notice to be published within ten (10) days after the date of filing, in a newspaper published within the county where the dredging operation is proposed, or in the event no newspaper is printed in that county, then in a newspaper of general circulation therein. This notice shall be published once a week for three (3) consecutive weeks.

(d) Any person, association, corporation or agency of the state or the federal government may, within the time allowed, file with the board a written protest against the granting of such application. The protest shall be signed by the protestant with his address and shall clearly set forth his objections to the approval of the application.

(e) The board or its agents may conduct such investigations as it deems desirable for the purpose of determining whether the permit should be approved. In determining whether an application for permit shall be approved or disapproved, the board shall consider its rules and regulations, the provisions of this chapter and other applicable laws. No application shall be approved unless the board specifically finds that:

(1) granting of the application will not be detrimental to the present and future economy of the area or the state, and

(2) granting of the application will not have an adverse effect upon the natural habitat and environment of fish and game or other wildlife of the area or the state, and

(3) granting of the application will not be detrimental to or cause undue damage to the natural resources of the area or the state, and

(4) granting of the application will not have an adverse effect upon present and future tourist and recreational value of the area or the state, and

(5) granting of the application will not have an adverse effect upon the future assessed value of the area or the state, and

(6) granting of the application is in the public interest.

(f) Upon making an initial determination to approve or disapprove the application for permit, the board shall notify the applicant and all protestants by mailing notice of its intended action to the addresses appearing on the application and the protests. If the applicant or any protestant desires to request further hearings written requests for such must be made to the board within thirty (30) days of the mailing of such notice. If no request is made, the proposed findings shall become final and nonreviewable. If such further hearing be so requested, it shall then be deemed a contested case, and a hearing conducted.

(g) No permit shall be finally granted except upon written approval by a two-thirds ($\frac{2}{3}$) majority of the membership of the state board of health.

History: En. Sec. 6, Ch. 123, L. 1969.

50-1107. Surety bond or cash deposit—permit limited to described land—permit not transferable. (a) No permit shall be issued to any person to conduct dredge-mining operations, until such person shall file with the board an initial surety bond in the sum of ten thousand dollars (\$10,000) for a specified and particularly described ten (10) acre tract of the area covered by the permit or for all of the land covered by the permit if the permit covers an area less than ten (10) acres, with sureties acceptable to the board conditioned for the faithful performance by the applicant for all of the requirements of this act, relative to land and watercourse restoration. Prior to conducting dredge-mining operations on any of the permit area not covered by the initial bond, the person to whom the permit has been issued shall file with the board a similar bond in the sum of ten thousand dollars (\$10,000) for each specified and particularly described ten (10) acre tract of the permit area or for the remaining area covered by the permit where less than ten (10) acres remain in the permit area. In lieu of such surety bond cash may be deposited with the board in the sum computed in the same manner as hereinabove set forth, to be retained as security for the faithful performance by the applicant of the requirements of this act.

(b) The permit shall describe the land and acres involved and may in the discretion of the board be limited to a lesser area than sought in the application.

(c) Permits issued hereunder are not transferable, and persons to whom such permits are issued shall not transfer nor attempt to transfer them to another.

History: En. Sec. 7, Ch. 123, L. 1969.

50-1108. Land required to be returned to natural state. Where any person conducts a dredge-mining operation within the state, it is hereby required that the ground disturbed thereby shall be by such operator smoothed over reasonably comparable with the natural contour of the ground prior to such disturbance. Any watercourse disturbed by such dredging shall be by such operator replaced on meander lines with pool and stream structure conducive to good fish and wildlife habitat and recreational use. The disturbed area shall be replanted as far as reasonably possible to the condition existing prior to dredging.

History: En. Sec. 8, Ch. 123, L. 1969.

50-1109. Settling ponds required. Where any person conducts a dredge-mining operation where water used in such mining process flows into a stream or river within the state, it is hereby required that such operator shall construct settling ponds of sufficient capacity and character to clarify the water used in the mining process before such water is discharged into the stream. Such settling ponds shall be constructed in such a manner as to prevent sedimentary overflow or other pollution during high water.

History: En. Sec. 9, Ch. 123, L. 1969.

50-1110. Inspection by board. It shall be the duty of the board in its administration of this act to cause periodic inspections to be made of the operation under such permits to determine compliance with this law and to make rules and regulations with respect thereto.

History: En. Sec. 10, Ch. 123, L. 1969.

50-1111. Violation of act—termination of permit. If the board determines that anyone holding a permit to conduct dredging operations have violated any of the terms of this act, the board is empowered to petition the district court of the state of Montana for authority to terminate the permit.

History: En. Sec. 11, Ch. 123, L. 1969.

50-1112. Discharge of surety bond—forfeiture of bond. (a) The surety bond required by this act to be given by a permit holder shall be exonerated and discharged upon the completion of such dredge-mining operation and upon certification by the board that the permit holder has fully complied with the requirements of this act and the rules and regulations of the board.

(b) In the event a permit holder fails to comply with the requirements of this act and the rules and regulations of the board then the applicable bond of such permit holder shall be forfeited to the state of Montana in such amount and to such extent as the board shall estimate and determine will be necessary to pay all cost and expenses of restoring the lands and beds of streams damaged by dredge mining of the defaulting permit holder. Such forfeited funds are to be administered through a special fund by the board to restore the lands and beds of streams damaged by dredge mining of such defaulting permittee. All funds from all bonds forfeited are hereby perpetually appropriated to a special fund to be administered by the board for the restoration of such lands and watercourses damaged in dredge-mining operations.

(c) No forfeiture of bond of a permit holder shall be made until after hearing duly noticed to the permit holder and the surety upon the bond and held as provided in section 11 [50-1111] hereof.

History: En. Sec. 12, Ch. 123, L. 1969.

50-1113. Misdemeanor—restoration period—protest by any party—penal provisions additional and cumulative. (a) Any dredge-mining operator or permit holder who fails to comply with any of the requirements of this act or of the rules and regulations and orders of the board made hereunder is guilty of a misdemeanor.

(b) Any dredge-mining operator or permit holder who fails to meet the land and watercourse restoration requirements of this act within one hundred eighty (180) days after the disturbance of the ground by dredging has occurred or such longer period of time not to exceed one (1) year as may be granted by the board, is guilty of a misdemeanor. Each subsequent day of failure to comply after the expiration of one hundred eighty (180) days or additional time period as extended by the board constitutes a separate offense.

(c) In addition to the penal provisions any person, association, corporation or agency of the state or federal government may apply to the board protesting any violation of this act and the board shall thereupon make an appropriate investigation.

(d) The penal and administrative provisions of this act are additional and cumulative to all rights of action at law or equity that may exist in any person, association, corporation or agency of the state or federal government to enjoin wrongful dredge-mining operations or recover damages resulting therefrom.

History: En. Sec. 13, Ch. 123, L. 1969.

50-1114. Appeal. Any person who is aggrieved by any final decision of the board under this act shall be entitled to judicial review by the district court and appeal to the supreme court.

History: En. Sec. 14, Ch. 123, L. 1969.

Separability Clause

Section 15 of Ch. 123, Laws 1969 read
“If any word, sentence, clause, section or

part of this act should be declared unconstitutional, it shall not affect the balance of the act, it being the intention of the people to have passed the remaining portion of the act.”

TITLE 51—MONOPOLIES

- Chapter 1. Unfair Practices Act, 51-113.
3. Montana Cigarette Sales Act, 51-301 to 51-314.

CHAPTER 1—UNFAIR PRACTICES ACT

Section 51-113. Montana trade commission—administration of act by—intervention—orders—review—appeals—process—finality of order.

51-113. Montana trade commission—administration of act by—intervention—orders—review—appeals—process—finality of order. (1) The Montana trade commission shall have the administration of this act; and the members thereof shall not receive any additional compensation for their services other than their salaries prescribed by law. The commission shall meet not less than six (6) times a year on or about the fifteenth (15th) day of the month, and as often and wherever it may decide other meetings are necessary. Suitable notice of all meetings shall be given as the commission may determine.

Said commission is empowered and directed to prevent any person, firm or corporation from violating any of the provisions of this chapter.

(2) Upon receiving notice from any person that any person, firm or corporation is violating or has violated any of the provisions of this chapter, the commission shall immediately notify the person giving such notice either to appear at its next regular or special meeting or to make a written reply to show probable cause of such violation. If probable cause is shown, the commission must thereafter make its own investigation and within sixty (60) days of the finding of probable cause must make a written report of its investigation and must mail a copy of its findings to the person initially giving notice of a violation.

If, after such investigation the commission shall have reason to believe that any such person, firm or corporation has been or is engaging in any course of conduct or doing any act or acts in violation of the provisions of this chapter and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, firm or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed not less than five (5) days after the service of said complaint. Any such complaint may be amended by the commission in its discretion at any time five (5) days prior to the issuance of an order based thereon. The person, firm or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, firm or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, firm or corporation may make application, and upon good cause shown may be allowed by the commission to intervene and appear in said pro-

ceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the act or conduct in question is prohibited by this chapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, firm or corporation an order requiring such person, firm or corporation to cease and desist from such acts or conduct. Until a transcript of the record in such hearing shall have been filed in a district court, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

(3) to (10). * * * [Same as parent volume.]

History: En. Sec. 12, Ch. 80, L. 1937; amd. Sec. 1, Ch. 50, L. 1939; amd. Sec. 1, Ch. 142, L. 1967.

Amendments

The 1967 amendment inserted the second sentence in the first paragraph of sub-

section (1); inserted the first paragraph in subsection (2); substituted "If, after such investigation" for "Whenever" at the beginning of the second paragraph in subsection (2); and inserted arabic numbers after the written numbers in subsections (2), (4), (7) and (8).

CHAPTER 3—MONTANA CIGARETTE SALES ACT

- Section 51-301. Declaration of policy.
 51-302. Short title.
 51-303. Definitions.
 51-304. Practices declared unlawful—penalty—prima facie evidence of unlawful intent.
 51-305. Sales from wholesaler to wholesaler.
 51-306. Combination sales.
 51-307. Exceptions.
 51-308. Sales to meet competition.
 51-309. Contracts in violation void.
 51-310. Evidence to be considered as bearing on bona fides of cost.
 51-311. Cigarettes purchased outside ordinary trade channels.
 51-312. Cost survey.
 51-313. Civil suits for violation of act.
 51-314. Powers of board.

51-301. Declaration of policy. It is hereby declared that the advertising, offering for sale or sale of cigarettes below cost, in the retail and wholesale trades, with the intent of injuring competitors or lessening competition, is an unfair and deceptive business practice. It is hereby declared to be the policy of the state to promote the public welfare and it is the purpose of this act to carry out that policy in the public interest and stabilize the sale of cigarettes, maximize and protect the state revenues from this source.

History: En. Preamble, Ch. 258, L. 1965.

Title of Act

An act to prevent unfair competition and unfair trade practices in the sale of cigarettes; to prohibit sales of cigarettes below cost; to protect and stabilize the collection of taxes on the sale of cigarettes

and revenues from the licensing of persons engaged in the sale of cigarettes; to confer powers and impose duties on the state board of equalization and on persons, as herein defined, engaged in the sale of cigarettes at retail or wholesale; and providing remedies and imposing penalties for violations thereof.

51-302. Short title. This act shall be known, designated and cited as "The Montana Cigarette Sales Act."

History: En. Sec. 1, Ch. 258, L. 1965.

51-303. Definitions. When used in this act, the following words and phrases shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning: (1) "Person" shall mean and include any individual, firm, association, company, partnership, corporation for profit or nonprofit corporation, joint stock company, club, agency, syndicate, co-operative, municipal corporation or other political subdivision of this state, trust, receiver, trustee, fiduciary and conservator.

(2) "Wholesaler" shall include any person who:

(a) purchases cigarettes directly from the manufacturer; or

(b) purchases cigarettes from any other person who purchases from the manufacturer and who acquires such cigarettes solely for the purpose of bona fide resale to retail dealers; or

(c) services retail outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes.

Nothing contained herein shall prevent a person from qualifying in different capacities as both "wholesaler" and "retailer" under the applicable provisions of this act.

(3) "Retailer" shall mean and include any person who operates a store, stand, booth or concession for the purpose of making sales of cigarettes at retail.

(4) "Administrative agency" or "board" shall mean the state board of equalization of Montana and, where the meaning of the context so requires, all deputies and employees duly authorized by such board.

(5) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(6) "Sale" shall mean any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatever.

(7) "Sell at wholesale," "sale at wholesale" and "wholesale" sales shall mean and include any bona fide transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose of resale.

(8) "Sell at retail," "sale at retail" and "retail sales" shall mean and include any transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual conduct of the seller's business, to the purchaser for consumption or use.

(9) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the case may be, in the quantity last purchased, whichever is lower.

(10) (a) The term "cost to the wholesaler" shall mean the "basic cost of cigarettes" to the wholesaler plus the "cost of doing business by the wholesaler," as evidenced by the standards and methods of accounting regularly employed by the said wholesaler in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance and advertising. The cost of doing business by a wholesaler shall also include any rebates, patronage dividends or concessions no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the said wholesaler, expressed as a percentage and applied to the "basic cost of cigarettes."

(b) In the absence of the filing with the board of proof which the board declares to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost of doing business by the wholesaler" shall be presumed to be five per centum (5%) of the "basic cost of cigarettes" to the wholesaler, plus cartage to the retail outlet, if performed or paid for by the wholesaler, which cartage cost, in the absence of the filing with the board of satisfactory proof of a lesser or higher cost, shall be considered to be three-fourths of one per centum ($\frac{3}{4}$ of 1%) of the "basic cost of cigarettes" to the wholesaler.

(11) (a) The term "cost to the retailer" shall mean the "basic cost of cigarettes" to the retailer plus the "cost of doing business by the retailer" as evidenced by the standards and methods of accounting regularly employed by the said retailer in his determination of costs for income tax reporting purposes for the total operation of his establishment and shall include within said costs, without limitation, labor costs, (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, business taxes, insurance, and advertising, including any rebates or concession no matter how defined, and any and all other indirect or overhead costs with respect to the operation of the establishment of the said retailer, expressed as a percentage and applied to the "basic costs of cigarettes"; provided, however, that any retailer who purchases from the manufacturer or from any other person at or at less than or about the price normally and usually charged for purchases in wholesale quantities shall, in determining "cost to the retailer," pursuant to this subsection, add the "cost of doing business by the wholesaler," as determined in subparagraph 10 (b) of this act, to the "basic cost of cigarettes" to said retailer, as well as the "cost of doing business by the retailer."

(b) In the absence of the filing with the board of satisfactory proof of a lesser or higher cost of doing business by the retailer making the

sale, the "cost of doing business by the retailer" shall be presumed to be ten per centum (10 %) of the "basic cost of cigarettes" to the retailer.

(c) In the absence of the filing with the board of satisfactory proof of a lesser or higher cost of doing business, the "cost of doing business by the retailer," who, in connection with the retailer's purchase, received not only the discounts ordinarily allowed upon purchases by a retailer, but also, in whole or part, the discounts ordinarily allowed upon purchases by a wholesaler, shall be presumed to be ten per centum (10 %) of the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler."

(12) "Business day" shall mean any day other than a Sunday or a legal holiday.

History: En. Sec. 2, Ch. 258, L. 1965;
amd. Sec. 1, Ch. 130, L. 1967.

Amendments

The 1967 amendment in subparagraph (10)(a) substituted "by the standards and methods * * * shall include within said costs" for "accounting, which shall include allocation of overhead costs and expenses, paid or incurred, and must include" after "as evidenced by" and added the last sentence; in subparagraph (11)(a) substituted "the said retailer * * * shall include within said costs" for "him in his allocation of overhead costs and

expenses, paid or incurred, and must include" after "employed by," inserted "costs" after "labor," inserted "business" before "taxes," inserted "including any rebates * * * the 'basic costs of cigarettes'" after "advertising," inserted "however" after "provided," substituted "purchases from the manufacturer * * * wholesale quantities" for "in connection with the retailer's purchases by a wholesaler" after "any retailer who," substituted "as determined in" for "as defined in section 2" before "subparagraph (10)(b)," and added "(b)" after "subparagraph (10)."

51-304. Practices declared unlawful—penalty—prima facie evidence of unlawful intent. It shall be unlawful and a violation of this act:

(1) For any retailer or wholesaler with intent to injure a competitor or substantially lessen competition;

(a) To advertise, offer to sell or sell, at retail or wholesale, cigarettes at less than cost to such a retailer or wholesaler, as the case may be.

(b) To offer a rebate in price, to give a rebate in price, to offer a concession of any kind, or to give a concession of any kind or nature whatever in connection with the sale of cigarettes if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business.

(2) For any retailer:

(a) To induce or attempt to induce or to procure or attempt to procure the purchase of cigarettes at a price less than "cost to the wholesaler," as defined in this act.

(b) To induce or attempt to induce or to procure or attempt to procure any rebate or concession of any kind or nature whatever in connection with the purchase of cigarettes.

(3) Any retailer or wholesaler who violates the provisions of this section shall be guilty of a misdemeanor and shall be prosecuted and punished by a fine of not more than five hundred dollars (\$500) for each such offense. Any individual who, as a director, officer, partner, member or agent of any person violating the provisions of this act, assists or aids, directly or indirectly, in such violation, shall, equally with the person for whom he acts, be responsible therefor and subject to the punishment and penalties set forth herein.

(4) Evidence of advertisement, offering to sell or sale of cigarettes by any retailer or wholesaler at less than cost to him, or evidence of any offer of a rebate in price, or the giving of a rebate in price, or an offer of a concession, or the giving of a concession of any kind or nature whatever in connection with the sale of cigarettes if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business, or the inducing or attempt to induce, or the procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler or the retailer, shall be prima facie evidence of intent to injure competitors or substantially lessen competition.

History: En. Sec. 3, Ch. 258, L. 1965.

51-305. Sales from wholesaler to wholesaler. When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in his selling price to the latter "cost to the wholesaler," as provided by section 2 [51-303], subparagraph (10) of this act, except that no such sale shall be made at a price less than the "basic cost of cigarettes," as defined in said section 2 [51-303], subparagraph (9) of this act, but the latter wholesaler, upon resale to a retailer, shall be considered to be the wholesaler governed by the provisions of said section 2 [51-303], subparagraph (10) of this act.

History: En. Sec. 4, Ch. 258, L. 1965.

51-306. Combination sales. In all advertisements, offers for sale or sales involving two or more items, at least one of which items is cigarettes, at a combined price, and in all advertisements, offers for sale or sales involving the giving of any gift or concession of any kind whatever (whether it be coupons or otherwise) if such rebate or concession offered or given in connection with the sale of cigarettes is not offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise as to which such rebate or concession may lawfully be given which is sold by said wholesaler or retailer in the ordinary course of his trade or business, the retailer's or wholesaler's combined selling price shall not be below the "cost to the retailer" or the "cost to the wholesaler," respectively, of the total costs of all articles, products, commodities, gifts and concessions included in such transactions.

History: En. Sec. 5, Ch. 258, L. 1965.

51-307. Exceptions. The provisions of this act shall not apply to sales at retail or sales at wholesale made (a) as an isolated transaction and not in the usual course of business; (b) where cigarettes are advertised, offered for sale, or sold in bona fide clearance sales for the purpose of discontinuing trade in such cigarettes and said advertising, offer to sell, or sale, shall state the reason thereof and the quantity of such cigarettes advertised, offered for sale, or sold as imperfect or damaged, and said advertising, offer to sell, or sale, shall state the reason therefor and the quantity of such cigarettes advertised, offered for sale, or to be sold; (c) where cigarettes are sold upon the final liquidation of a business; or (d) where cigarettes are advertised, offered for sale, or sold by any fiduciary or other officer acting under the order or direction of any court.

History: En. Sec. 6, Ch. 258, L. 1965.

51-308. Sales to meet competition. (a) Any retailer may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer as prescribed in this act. Any wholesaler may advertise, offer to sell, or sell cigarettes at a price made in good faith to meet the price of a competitor who is rendering the same type of service and is selling the same article at cost to him as a wholesaler, as prescribed in this act. The price of cigarettes advertised, offered for sale, or sold under the exceptions specified in section 6 [51-307] shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor within the purview of this section.

(b) In the absence of proof of the "price of a competitor," under this section, the "lowest cost to the retailer," or the "lowest cost to the wholesaler," as the case may be, determined by any "cost survey," made pursuant to section 11 [51-312] of this act, may be considered to be the "price of a competitor," within the meaning of this section.

History: En. Sec. 7, Ch. 258, L. 1965.

51-309. Contracts in violation void. Any contract, expressed or implied, made by any person in violation of any of the provisions of this act, is declared to be an illegal and void contract and no recovery thereon shall be had.

History: En. Sec. 8, Ch. 258, L. 1965.

51-310. Evidence to be considered as bearing on bona fides of cost. (a) In determining "cost to the retailer" and "cost to the wholesaler," the board or a court shall receive and consider as bearing on the bona fides of such cost, evidence tending to show that any person complained against under any of the provisions of this act purchased cigarettes, with respect to the sale of which complaint is made, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal,

customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

(b) Merchandise given gratis, or payment made to a retailer or wholesaler by the manufacturer thereof for display, or advertising, or promotion purposes or otherwise, shall not be considered in determining the cost of cigarettes to the retailer or wholesaler.

History: En. Sec. 9, Ch. 258, L. 1965.

51-311. Cigarettes purchased outside ordinary trade channels. In establishing the cost of cigarettes to the retailer or wholesaler, the invoice cost of said cigarettes purchased at a forced, bankrupt or closeout sale, or other sale outside of the ordinary channels of trade, may not be used as a basis for justifying a price lower than one based upon the replacement cost of the cigarettes to the retailer or wholesaler in the quantity last purchased, through the ordinary channels of trade.

History: En. Sec. 10, Ch. 258, L. 1965.

51-312. Cost survey. Where a cost survey pursuant to cost accounting practices, including those defined in section 2 [51-303] (10) (a), has been made by the board, or by a trade association or other industry group, for the trading area in which the offense is committed, to establish the lowest "cost to the retailer" and the lowest "cost to the wholesaler," said cost survey shall be considered to be competent evidence for use in proving the cost to the person complained against within the provisions of this act.

History: En. Sec. 11, Ch. 258, L. 1965.

51-313. Civil suits for violation of act. (a) In addition to penalties provided by section 3 [51-304] of this act, any person injured by any violation of this act, or any trade association which is representative of such a person, may maintain an action in any court of equitable jurisdiction to prevent, restrain or enjoin such violation. If in such action a violation of this act shall be established, the court shall enjoin and restrain or otherwise prohibit such violation and, in addition thereto, shall assess in favor of the plaintiff and against the defendant the costs of the suit and reasonable attorney's fee. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved, but where alleged and proved, the plaintiff in said action, in addition to such injunctive relief and fees and costs of suit, shall be entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

(b) In the event no injunctive relief is sought or required, any person injured by a violation of this act may maintain an action for damages alone in any court of competent jurisdiction and the measure of damages in such action shall be the same as prescribed in subsection (a) of this section.

History: En. Sec. 12, Ch. 258, L. 1965.

51-314. Powers of board. (a) In addition to the penalties and rights imposed and set forth in sections 3 [51-304] and 12 [51-313] of this act,

the board shall enforce the provisions of this act. The board shall have the power to adopt, amend and repeal rules and regulations necessary to enforce and administer the provisions of this act. The board is given full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state of Montana upon sufficient cause appearing of the violation of this act or upon the failure of such licensee or permittee to comply with any of the provisions of this act.

(b) No license or licenses shall be suspended or revoked except upon notice to the licensee, and after a hearing prescribed by said board at its principal office. The board, upon a finding by it that the licensee has failed to comply with any provisions of this act or any rule or regulation promulgated thereunder, shall, in the case of the first offender, suspend the license or licenses of the said licensee for a period of not less than five (5) nor more than twenty (20) consecutive business days, and, in the case of a second or plural offender, shall suspend said license or licenses for a period of not less than twenty (20) consecutive business days nor more than twelve (12) months, and, in the event the board finds the offender has been guilty of willful and persistent violations, he may revoke such licensee's license or licenses.

(c) Any person whose license or licenses have been so revoked may apply to the board at the expiration of one year for a reinstatement of his license or licenses. Such license or licenses may be reinstated by the board if it shall appear to the satisfaction of said board that the licensee will comply with the provisions of this act and the rules and regulations promulgated thereunder.

(d) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or upon other premises controlled by him or others or in any other manner or form whatever. Nor shall any disciplinary proceedings or action be barred or abated by the expiration, transfer, surrender, continuance, renewal or extension of any license issued under the provisions of the "cigarette tax law," as provided in articles of chapter 11 of the Revised Codes of Montana, 1947.

Any determination by the board and any order of suspension or revocation of a license or licenses thereunder, or refusal to reinstate a license or licensee after revocation, shall be reviewable by the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction.

History: En. Sec. 13, Ch. 258, L. 1965.

Separability Clause

Section 14 of Ch. 258, Laws 1965 read "Provisions of act severable. The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the re-

mainder of this act shall continue in full force and effect."

Repealing Clause

Section 15 of Ch. 258, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Cross-Reference

Cigarette tax, secs. 84-5601 to 84-5623.

TITLE 52—MORTGAGES

- Chapter 1. Mortgages in general, 52-114, 52-116, 52-117.
2. Mortgages of real property, 52-212.
3. Security interests in personal property, 52-312 to 52-314, 52-319 to 52-323.
4. Small tract financing act, 52-401 to 52-417.

CHAPTER 1—MORTGAGES IN GENERAL

- Section 52-114. Assignment of mortgage—recording—notice—address of assignee prerequisite to recording.
52-116. Recording of subordination or waiver agreements—real estate.
52-117. Uniform Commercial Code—applicability.

52-114. (8259) Assignment of mortgage—recording—notice—address of assignee prerequisite to recording. An assignment of a real estate mortgage may be recorded in like manner as a real estate mortgage and the record thereof shall operate as due and legal notice to the mortgagor and all persons subsequently deriving title to the mortgage from the assignor as well as to all other persons including subsequent purchasers, encumbrancers, mortgagees or other lien holders.

Any such assignment shall contain the assignee's post-office address at his place of residence, and shall not be entitled to be recorded or filed unless it contains such post-office address. [Effective January 1, 1965.]

History: En. Sec. 3823, Civ. C. 1895; re-en. Sec. 5744, Rev. C. 1907; re-en. Sec. 8259, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1925; amd. Sec. 1, Ch. 159, L. 1935; amd. Sec. 11-131, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2934.

Amendment

The 1963 amendment deleted "and an assignment of a chattel mortgage may be filed in like manner as a chattel mortgage" before "and the record thereof" in the first paragraph.

52-116. Recording of subordination or waiver agreements—real estate. That a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any real estate mortgage of record or the property therein included may be recorded in like manner as a real estate mortgage, and such record shall operate as due and legal notice to the mortgagor and the mortgagee and to all other interested persons. Any such subordination agreement or waiver shall be valid and binding so far as the mortgage therein referred to or the property covered by such mortgage is concerned, when executed by the record holder of the mortgage involved. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 126, L. 1937; amd. Sec. 11-132, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "and a subordination agreement or a waiver in favor of subsequent purchasers, encumbrancers or mortgagees as regards any chattel mortgage on file, or the personal

property therein described, may be filed in like manner as a chattel mortgage" before "and such record" in the first sentence; deleted "or such filing as the case may be" after "and such record" in the first sentence; and corrected an apparent typographical error which originated in the Laws of 1937.

52-117. Uniform Commercial Code—applicability. In the event of conflict between any provision of this chapter and the Uniform Commercial Code, the latter shall govern. [Effective January 1, 1965.]

History: En. 52-117 by Sec. 11-133, Ch. 264, L. 1963.

CHAPTER 2—MORTGAGES OF REAL PROPERTY

Section 52-212. Mortgages and deeds of trust covering real and personal property.

52-212. (8273) Mortgages and deeds of trust covering real and personal property. All mortgages and deeds of trust covering both real and personal property, executed by a corporation, association or partnership, or by an individual or individuals, are governed by the law relating to mortgages or deeds of trust of real property so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned. [Effective January 1, 1965.]

History: En. Sec. 3849, Civ. C. 1895; re-en. Sec. 5756, Rev. C. 1907; amd. Sec. 1, Ch. 72, L. 1921; amd. Sec. 1, Ch. 39, L. 1927; amd. Sec. 1, Ch. 11, L. 1931; amd. Sec. 11-134, Ch. 264, L. 1963.

Amendment

The 1963 amendment deleted "or assignments for the benefit of creditors" after "deeds of trust" near the beginning of the section; made minor changes in phraseology; added "so far as the real property is concerned, and by the Uniform Commercial Code—Secured Transactions, so far as the personal property is concerned" at the end of the section; deleted from the end of the section language reading, "and must be recorded

in the office of the county clerk of every county where any part of said property is situated, and the same are valid, notwithstanding the possession of such property is retained by such corporation, association or partnership, or by such individual or individuals, but any such mortgages, deeds of trust, or assignments for the benefit of creditors must be accompanied by the affidavit of good faith required to accompany mortgages of personal property, and also by a receipt for an executed copy of the instrument signed on behalf of the corporation by its president, vice-president, secretary, assistant secretary or managing agent" and three other sentences, for text of which see parent volume.

CHAPTER 3—SECURITY INTERESTS IN PERSONAL PROPERTY

Section 52-312. Foreclosure of security interests in personal property—by action—by sheriff's sale.

52-313. Sales—commencement and postponement.

52-314. Report of sales, and filing thereof.

52-319. Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—list to be furnished stock inspectors—livestock markets not liable when notice not filed.

52-320. Contents of notices.

52-321. Duty of secured parties to file satisfactions of security agreements.

52-322. Fees—disposal of.

52-323. Brand recorder or livestock commission not responsible for collection or payment of money under security agreements.

52-301 to 52-311. (8275 to 8285) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 81, L. 1907; Secs. 1 to 11, Ch. 86, L. 1913; Sec. 1, Ch. 94, L. 1915; Sec. 1, Ch. 152, L. 1919; Sec. 1, Ch. 183, L. 1919; Sec. 1, Ch. 32, L. 1923; Sec. 1, Ch. 116, L. 1925; Sec. 1, Ch. 36, L. 1941; Sec. 1, Ch. 149, L. 1949;

Secs. 1, 2, Ch. 67, L. 1961), relating to execution, filing, duration, subrogation, protection, and proof of mortgages on personal property, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

52-312. (8286) Foreclosure of security interests in personal property—by action—by sheriff's sale. An action for the foreclosure of a security interest in personal property may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages upon real property, and the same may be joined in an action for the recovery of the possession of the property subject to the security interest; but the remedial scope of proceedings for the foreclosure of interests subject to the Uniform Commercial Code—Secured Transactions is governed by Part 5 thereof.

A security agreement covering personal property may contain a clause authorizing the sheriff of the county in which said property, or any part thereof, may be, on request of the secured party and the delivery to the sheriff of a copy of such security agreement, to take possession of such property in case of default and to sell the same. If a security agreement contains such clause and if the secured party complies with the terms thereof, it is hereby made the duty of such sheriff, upon the request of the secured party or his legal representative or assigns, to take possession of such property and to advertise and sell the whole or any part of the same; and at such sale the secured party, or his representatives or assigns, may, in good faith, purchase the property so sold, or any part thereof. The sheriff shall require a reasonable indemnity bond from the secured party or his assigns before taking possession of or selling the said property. Notice of sale, application of the proceeds, liability for deficiency, and effect of disposition shall be as provided in section 9-504 [87A-9-504] of the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. Sec. 3872, Civ. C. 1895; re-en. Sec. 5769, Rev. C. 1907; amd. Sec. 12, Ch. 86, L. 1913; re-en. Sec. 8286, R. C. M. 1921; amd. Sec. 11-135, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "security interest" for "mortgage" throughout the section and made numerous other changes. For previous text, see parent volume.

52-313. (8287) Sales—commencement and postponement. All sales made under the provisions of this act shall be commenced between the hours of nine o'clock in the morning and five o'clock of the afternoon of the day specified in the notice, and within thirty days after the seizure of the property, unless the sale shall be postponed. Any sale may be postponed at the discretion of the sheriff one week, by public announcement at the time designated for the sale to take place when there are no bidders, or when the amount offered is grossly inadequate, or upon the request of the debtor. [Effective January 1, 1965.]

History: En. Sec. 13, Ch. 86, L. 1913; re-en. Sec. 8287, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1953; amd. Sec. 11-136, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "debtor" for "mortgagor" at the end of the section.

Notice of Sale

Where notice of foreclosure sale of mortgaged sheep was posted out of sight of the actual sale and misnamed the location of the sale, mortgagee had failed to fulfill the strict statutory requirements in enforcing the lien and the sale was void. *Goggins v. Bookout*, 141 M 449, 378 P 2d 212.

52-314. (8288) Report of sales, and filing thereof. Within ten days after the sale of any property subject to a security interest, as herein pro-

vided, the person making the sale shall make out in writing a full report, under oath, of all the proceedings in such foreclosure, specifying particularly the property sold, the amount received therefor, the name of the person to whom sold, the amount of the costs and expenses itemized, a copy of the notice of sale, a statement of the manner in which notice of the sale was given, and the disposition made by him of the proceeds of the sale, and shall file the same in the office of the county clerk and recorder, or other filing officer, where the financing statement respecting the security agreement is filed; which report shall be received in all courts as prima-facie evidence of the facts therein stated. The county clerk and recorder or other filing officer shall properly index said report and attach the report of sale to the financing statement on file. [Effective January 1, 1965.]

History: En. Sec. 14, Ch. 86, L. 1913; re-en. Sec. 8288, R. C. M. 1921; amd. Sec. 11-137, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "property subject to a security interest" near the beginning of the section for "mortgaged property"; substituted "a statement of the manner in which notice of the sale

was given" for "with the statement that the same was posted as herein provided"; inserted "or other filing officer" after "county clerk and recorder" in two places; substituted "financing statement respecting the security agreement" near the end of the first sentence and "financing statement" in the second sentence for "mortgage."

52-315 to 52-317. (8289 to 8290.1) Repealed.

Repeal

These sections (Secs. 15, 16, Ch. 86, L. 1913; Sec. 1, Ch. 100, L. 1923; Sec. 1, Ch. 3, L. 1941), relating to satisfaction of

chattel mortgages and to mortgages on crops and livestock, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

52-319. (3308.1) Notices of security agreements covering livestock, renewals, assignments and satisfactions to be filed by recorder of marks and brands—list to be furnished stock inspectors—livestock markets not liable when notice not filed. The general recorder of marks and brands of the state of Montana shall accept and file in the office of the general recorder of marks and brands, notices of security agreements, renewals, assignments and satisfactions thereof covering livestock owned by any person, firm, corporation, or association, and bearing his, their, or its recorded brand, and shall list such notices on the official records of marks and brands kept by him, and also shall cause to be listed said notices in the offices of the stock inspectors, employed by the livestock commission and stationed at the several central livestock markets where records are kept of marks and brands. All forms on which such notices shall be given shall be prescribed by the livestock commission and shall be furnished by the secured party, who shall give such notice. No livestock market to which livestock is shipped shall be held liable to any secured party for the proceeds of livestock sold through such livestock market by the debtor unless notice of such security agreement is filed as hereinbefore provided. [Effective January 1, 1965.]

History: En. Sec. 1, Ch. 91, L. 1935; amd. Sec. 1, Ch. 36, L. 1949; amd. Sec. 11-138, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "se-

curity agreements," "secured party" in two places, "debtor," and "security agreement" respectively for "chattel mortgages," "mortgagee of livestock," "mortgagee," "mortgagor," and "mortgage"; and made a minor change in phraseology.

52-320. (3308.2) Contents of notices. Such notices shall consist of a statement showing the date of security agreement, the names and addresses of the debtors and secured parties, and/or holders and owners thereof, a description of the livestock covered by said security agreement, and in case of notice of renewal, the notice shall state the date of renewal thereof and in the case of a notice of assignment of a security interest, such notice shall state the date of such assignment, and a description of the security agreement as to which such assignment is made and the parties to the assignment, and such other or additional information as may be required from time to time by the livestock commission of the state of Montana. [Effective January 1, 1965.]

History: En. Sec. 2, Ch. 91, L. 1935; amd. Sec. 11-139, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "se-

curity interest" for "mortgage" and made numerous other changes in the required contents of the notices. For previous text, see parent volume.

52-321. (3308.3) Duty of secured parties to file satisfactions of security agreements. It shall be the duty of the secured parties, who filed notices of security agreements, renewals and assignments thereof, with the general recorder of marks and brands, as provided for in this act, to file notices of satisfaction of such security agreements with the general recorder of marks and brands immediately upon the satisfaction of said security agreement. [Effective January 1, 1965.]

History: En. Sec. 3, Ch. 91, L. 1935; amd. Sec. 11-140, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "se-

cured parties," "security agreements" in two places, and "security agreement," respectively, for "mortgagees," "chattel mortgages," "mortgages," and "mortgage."

52-322. (3308.4) Fees—disposal of. The general recorder of marks and brands shall charge for filing and listing such notices of security agreements the sum of two dollars (\$2) for each recorded brand listed in each security agreement, and for filing and listing each notice of satisfaction or renewal or assignment of such security agreement, the sum of two dollars (\$2) for each recorded brand listed therein. All fees so charged shall be paid into the earmarked revenue fund for the use of the livestock commission.

History: En. Sec. 4, Ch. 91, L. 1935; amd. Sec. 1, Ch. 135, L. 1953; amd. Sec. 96, Ch. 147, L. 1963; amd. Sec. 11-141, Ch. 264, L. 1963; amd. Sec. 1, Ch. 12, L. 1969.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147, and once by Ch. 264. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments. The amendment by Ch. 264, however, does not take effect until January 1, 1965.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund for use of the livestock commission" for "the livestock commission fund" at the end of the section.

Chapter 264, Laws 1963, substituted "security agreement" or "security agreements" for "chattel mortgage" or "chattel mortgages" in three places in the first sentence.

The 1969 amendment increased the filing and listing fees from "one dollar" to "two dollars."

52-323. (3308.5) Brand recorder or livestock commission not responsible for collection or payment of money under security agreements. Neither the general recorder of marks and brands nor the livestock commission, nor any of its agents or employees shall be held responsible or liable to either debtor or secured party for the collection or payment of any money due the holder of any security agreement covering livestock, or renewals, satisfactions, or assignments thereof as provided in this act; providing the provisions of this act are carried out in good faith. [Effective January 1, 1965.]

History: En. Sec. 5, Ch. 91, L. 1935; amd. Sec. 11-142, Ch. 264, L. 1963.

Amendment

The 1963 amendment substituted "debtor or secured party" for "mortgagor or

mortgagee"; substituted "security agreement covering livestock" for "livestock mortgage"; and deleted the words "on account of the filing and listing of notices of chattel mortgage" which preceded "or renewals."

CHAPTER 4—SMALL TRACT FINANCING ACT

- Section 52-401. Short title.
 52-402. Declaration of policy.
 52-403. Definitions.
 52-404. Authorization of trust indentures.
 52-405. Qualifications of trustee.
 52-406. Reconveyance upon performance—liability for failure to reconvey.
 52-407. Time within which foreclosure must be commenced.
 52-408. Foreclosure by advertisement and sale.
 52-409. Notice of sale to be mailed, posted and published.
 52-410. Trustee's deed.
 52-411. Possession.
 52-412. Discontinuance of foreclosure proceedings when entire amount of default paid.
 52-413. Disposition of proceeds of sale.
 52-414. Deficiency judgment not allowed.
 52-415. Requests for copies of notice of sale.
 52-416. Trustee's fees and attorney's fees.
 52-417. Trust indenture deemed to be mortgage on real property.

52-401. Short title. This act may be cited as the "Small Tract Financing Act of Montana."

History: En. Sec. 1, Ch. 177, L. 1963.

Title of Act

An act authorizing the optional use of trust indentures as security instruments in the financing of small tracts embracing three acres of land, or less; providing for the conveyance of title to a trustee to secure the performance of an obligation and for reconveyance upon performance; conferring a power of sale upon the trustee under a trust indenture and prescribing the time and manner in which such power may be exercised; providing for the sale of the property at trustee's sale in the event of default; prescribing the form of notice of sale and providing for the recordation, mailing, posting and publication of notice of sale; providing for

trustee's deeds and the form and effect thereof; providing for the disposition of the proceeds of sale; disallowing deficiency judgment in certain cases; providing for possession following sale; defining the fees and expenses chargeable to the grantor of a trust deed; providing for discontinuance of foreclosure by advertisement and sale; relating to the applicability of mortgage laws to trust indenture transactions; amending sections 93-6005, 93-6006, and 93-6007, R.C.M. 1947, relating to sales of real estate under powers of sale in mortgages and rights of redemption, to exclude therefrom trust indentures as defined in this act; and providing a short title, a severability clause and an effective date.

52-402. Declaration of policy. Because the financing of homes and business expansion is essential to the development of the state of Montana, and because such financing, usually involving areas of real estate

of not more than three acres, has been restricted by the laws relating to mortgages of real property, and because more such financing of homes and business expansion is available if the parties can use security instruments and procedures not subject to all the provisions of the mortgage laws, it is hereby declared to be the public policy of the state of Montana to permit the use of trust indentures for estates in real property of not more than three acres as hereinafter provided.

History: En. Sec. 2, Ch. 177, L. 1963.

52-403. Definitions. As used in this act, unless the context requires otherwise:

(1) "Beneficiary" means the person named or otherwise designated in a trust indenture as the person for whose benefit a trust indenture is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust indenture as security for the performance of an obligation.

(3) "Trust indenture" means an indenture executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by a trust indenture, or his successor in interest.

(5) "Three acres" means three acres of land.

Where the trust indenture states that the real property involved does not exceed three acres, such statement shall be binding upon all parties and conclusive as to compliance with the provisions of this act relative to the power to make a transfer, trust, and power of sale.

History: En. Sec. 3, Ch. 177, L. 1963.

52-404. Authorization of trust indentures. Transfers in trust of any interest in real property of an area not exceeding three acres may be made to secure the performance of an obligation of a grantor, or any other person named in the indenture, to a beneficiary; provided that it shall be unlawful to substitute a trust indenture for any mortgage in existence on the effective date of this act. Where any transfer in trust of any interest in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security; and a trust indenture executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of the beneficiary, by judicial procedure as provided by law for the foreclosure of mortgages on real property. The power of sale may be exercised by the trustee without express provision therefor in the trust indenture.

History: En. Sec. 4, Ch. 177, L. 1963.

52-405. Qualifications of trustee. (1) The trustee of a trust indenture under this act shall be:

(a) An attorney who is licensed to practice law in Montana; or

(b) A bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or

(c) A title insurance or abstract company authorized to do business in Montana under the laws of Montana.

(2) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the clerk and recorder of each county in which the trust property or some part thereof is situated, a substitution of trustee. The substitution shall identify the trust indenture by stating the names of the original parties thereto and the date of recordation and the book and page where the same is recorded, shall state the name and mailing address of the new trustee, and shall be executed and acknowledged by all of the beneficiaries designated in the trust indenture, or their successors in interest. From the time the substitution is filed for record, the new trustee shall be vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee.

History: En. Sec. 5, Ch. 177, L. 1963.

52-406. Reconveyance upon performance—liability for failure to reconvey. Upon performance of the obligation secured by the trust indenture, the trustee upon written request of the beneficiary shall reconvey the interest in real property described in the trust indenture to the grantor. In the event the obligation is performed and the beneficiary refuses to request reconveyance or the trustee refuses to reconvey the property, the beneficiary or trustee so refusing shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

History: En. Sec. 6, Ch. 177, L. 1963.

52-407. Time within which foreclosure must be commenced. The foreclosure of a trust indenture by advertisement and sale or by judicial procedure shall be commenced within the time, including extensions, provided by law for the foreclosure of a mortgage on real property.

History: En. Sec. 7, Ch. 177, L. 1963.

52-408. Foreclosure by advertisement and sale. (1) The trustee may foreclose a trust indenture by advertisement and sale under this act if:

(a) The trust indenture, any assignments of the trust indenture by the trustee or the beneficiary, and any appointment of a successor trustee are recorded in the office of the clerk and recorder of each county in which the property described in the trust indenture, or some part thereof, is situated;

(b) There is a default by the grantor or other person owing an obligation, the performance of which is secured by the trust indenture, or by their successors in interest, with respect to any provision in the indenture which authorizes sale in the event of default of such provision; and

(c) The trustee or beneficiary shall have filed for record in the office of the clerk and recorder in each county where the property described in

the indenture, or some part thereof, is situated, a notice of sale, duly executed and acknowledged by such trustee or beneficiary, setting forth:

- (i) The names of the grantor, trustee, and beneficiary in the trust indenture and the name of any successor trustee;
- (ii) A description of the property covered by the trust indenture;
- (iii) The book and page of the mortgage records where the trust indenture is recorded;
- (iv) The default for which the foreclosure is made;
- (v) The sum owing on the obligation secured by the trust indenture;
- (vi) The trustee's or beneficiary's election to sell the property to satisfy the obligation;
- (vii) The date of sale, which shall not be less than 120 days subsequent to the date on which the notice of sale is filed for record, and the time of sale, which shall be between the hours of 9:00 a.m. and 4:00 p.m., Mountain Standard Time;
- (viii) The place of sale which shall be at the courthouse of the county or one of the counties where the property is situated, or at the location of the property, or at the trustee's usual place of business if within the county or one of the counties where the property is situated.

(2) A trust deed may be foreclosed by advertisement and sale in the manner hereinafter provided.

History: En. Sec. 8, Ch. 177, L. 1963.

52-409. Notice of sale to be mailed, posted and published. (1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

- (i) The grantor, at the grantor's address as set forth in the trust indenture, or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;
- (ii) Each person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;
- (iii) Each person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request.
- (iv) Any successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) Any person having a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold;

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property, or

some part thereof, is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least 3 public places in each county in which the property, or some part thereof, is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property, or some part thereof, is situated, affidavits of mailing, posting and publication showing compliance with the requirements of this section. On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels and any person, including the beneficiary under the trust indenture, but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(3) The purchaser at the sale shall pay the price bid in cash, and, upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to re-sell the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person.

History: En. Sec. 9, Ch. 177, L. 1963.

52-410. Trustee's deed. (1) The trustee's deed to the purchaser at the trustee's sale may contain, in addition to a description of the property conveyed, recitals of compliance with the requirements of this act relating to the exercise of the power of sale and the sale, including recitals of the facts concerning the default, the notice given, the conduct of the sale, and the receipt of the purchase money from the purchaser.

(2) When the trustee's deed is recorded in the deed records of the county or counties where the property described in the deed is situated, the recitals contained in the deed and in the affidavits required under subsection (2) of section 9 [52-409 (2)] of this act, shall be prima-facie evidence in any court of the truth of the matters set forth therein, except that the same shall be conclusive evidence in favor of subsequent bona fide purchasers and encumbrancers for value and without notice.

(3) The trustee's deed shall operate to convey to the purchaser, without right of redemption, the trustee's title and all right, title, interest and claim of the grantor and his successors in interest and of all persons claiming by, through or under them, in and to the property sold including all such right, title, interest and claim in and to such property acquired

by the grantor or his successors in interest subsequent to the execution of the trust indenture.

History: En. Sec. 10, Ch. 177, L. 1963.

52-411. Possession. The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession after that date under any interest, except one prior to the trust indenture, shall be deemed to be tenants at will.

History: En. Sec. 11, Ch. 177, L. 1963.

52-412. Discontinuance of foreclosure proceedings when entire amount of default paid. Whenever all or a portion of any obligation secured by a trust indenture has, prior to the maturity date fixed in such obligation, become due or been declared due by reason of a breach or default in the performance of any obligation secured by the trust indenture, including a default in the payment of interest or of any installment of principal, or by reason of failure of the grantor to pay, in accordance with the terms of such trust indenture, taxes, assessments, premiums for insurance or advances made by the beneficiary in accordance with the terms of such obligation or of such trust indenture, the grantor or his successor in interest in the trust property or any part thereof or any other person having a subordinate lien or encumbrance of record thereon or any beneficiary under a subordinate trust indenture, at any time prior to the time fixed by the trustee for the trustee's sale if the power of sale is to be exercised, may pay to the beneficiary or his successor in interest the entire amount then due under the terms of such trust indenture and the obligation secured thereby (including costs and expenses actually incurred and reasonable trustee's and attorney's fees) other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon all proceedings theretofore had or instituted to foreclose the trust indenture shall be canceled and the obligation and the trust indenture shall be reinstated and shall be and remain in force and effect the same as if no such acceleration had occurred. If the default is cured and the obligation and the trust indenture reinstated in the manner hereinabove provided, the beneficiary, or his assignee, shall, on demand of any person having an interest in the trust property, execute, acknowledge and deliver to him a request that the trustee execute, acknowledge and deliver a cancellation of the recorded notice of sale under such trust indenture. Any beneficiary under a trust indenture, or his assignee, who, for a period of 30 days after such demand refused to request the trustee to execute, acknowledge and deliver such cancellation shall be liable to the person entitled to such request for all damages resulting from such refusal. A cancellation of a recorded notice of sale shall, when executed and acknowledged, be entitled to be recorded and shall be sufficient if it sets forth a reference to the trust indenture and the book and page where the same is recorded, a reference to the notice of sale and to the book and page where the same is recorded and a statement that such notice of sale is canceled.

History: En. Sec. 12, Ch. 177, L. 1963.

52-413. Disposition of proceeds of sale. The trustee shall apply the proceeds of the trustee's sale as follows: (1) To the costs and expenses of exercising the power of sale and of the sale, including reasonable trustee's fees and attorney's fees;

(2) To the obligation secured by the trust indenture;

(3) The surplus, if any, to the person or persons legally entitled thereto, or the trustee, in his discretion, may deposit such surplus with the clerk and recorder of the county in which the sale took place. Upon depositing such surplus, the trustee shall be discharged from all further responsibility therefor and the clerk and recorder shall deposit the same with the county treasurer subject to the order of the district court of such county.

History: En. Sec. 13, Ch. 177, L. 1963.

52-414. Deficiency judgment not allowed. When a trust indenture executed in conformity with this act is foreclosed by advertisement and sale, no other or further action, suit or proceedings shall be taken, nor judgment entered for any deficiency, against the grantor or his surety, guarantor, or successor in interest, if any, on the note, bond or other obligation secured by the trust indenture, or against any other person obligated on such note, bond or other obligation.

History: En. Sec. 14, Ch. 177, L. 1963.

52-415. Requests for copies of notice of sale. At any time subsequent to the recordation of a trust indenture and prior to the recordation of notice of sale under the indenture, any person desiring a copy of any notice of sale under a trust indenture as provided in subsection (1) of section 9 [52-409(1)] of this act may cause to be filed for record in the office of the county clerk and recorder of the county or counties in which any part or parcel of the real property is situated, a duly acknowledged request for a copy of any notice of sale, showing service upon the trustee. The request shall contain the name and address of the person requesting a copy of the notice and shall identify the trust indenture by stating the names of the parties to the indenture, the date of recordation of the indenture, and the book and page where the indenture is recorded. The county clerk and recorder shall immediately make a cross reference of the request to the trust indenture either on the margin of the page where the trust indenture is recorded or in some other suitable place. No request, statement, or notation placed on the record pursuant to this section shall affect title to the property or be deemed notice to any person that any person so recording the request has any right, title, interest in, lien, or charge upon the property referred to in the trust indenture.

History: En. Sec. 15, Ch. 177, L. 1963.

52-416. Trustee's fees and attorney's fees. Reasonable trustee's fees and attorney's fees to be charged to the grantor in the event of foreclosure by advertisement and sale shall not exceed, in the aggregate, 5% of the amount due on the obligation, both principal and interest, at the time of the trustee's sale. If prior to the trustee's sale the obligation and

the trust indenture shall be reinstated in accordance with provisions of section 12 [52-412] of this act, the reasonable trustee's fees and attorney's fees to be charged to the grantor shall not exceed \$150.00. In no event shall trustee's fees and attorney's fees be charged to a grantor on account of any services rendered prior to the commencement of foreclosure.

History: En. Sec. 16, Ch. 177, L. 1963.

52-417. Trust indenture deemed to be mortgage on real property. A trust indenture is deemed to be a mortgage on real property and is subject to all laws relating to mortgages on real property except to the extent that such laws are inconsistent with the provisions of this act, in which event the provisions of this act shall control. For the purpose of applying the mortgage laws, the grantor in a trust indenture is deemed the mortgagor and the beneficiary is deemed the mortgagee.

History: En. Sec. 17, Ch. 177, L. 1963.

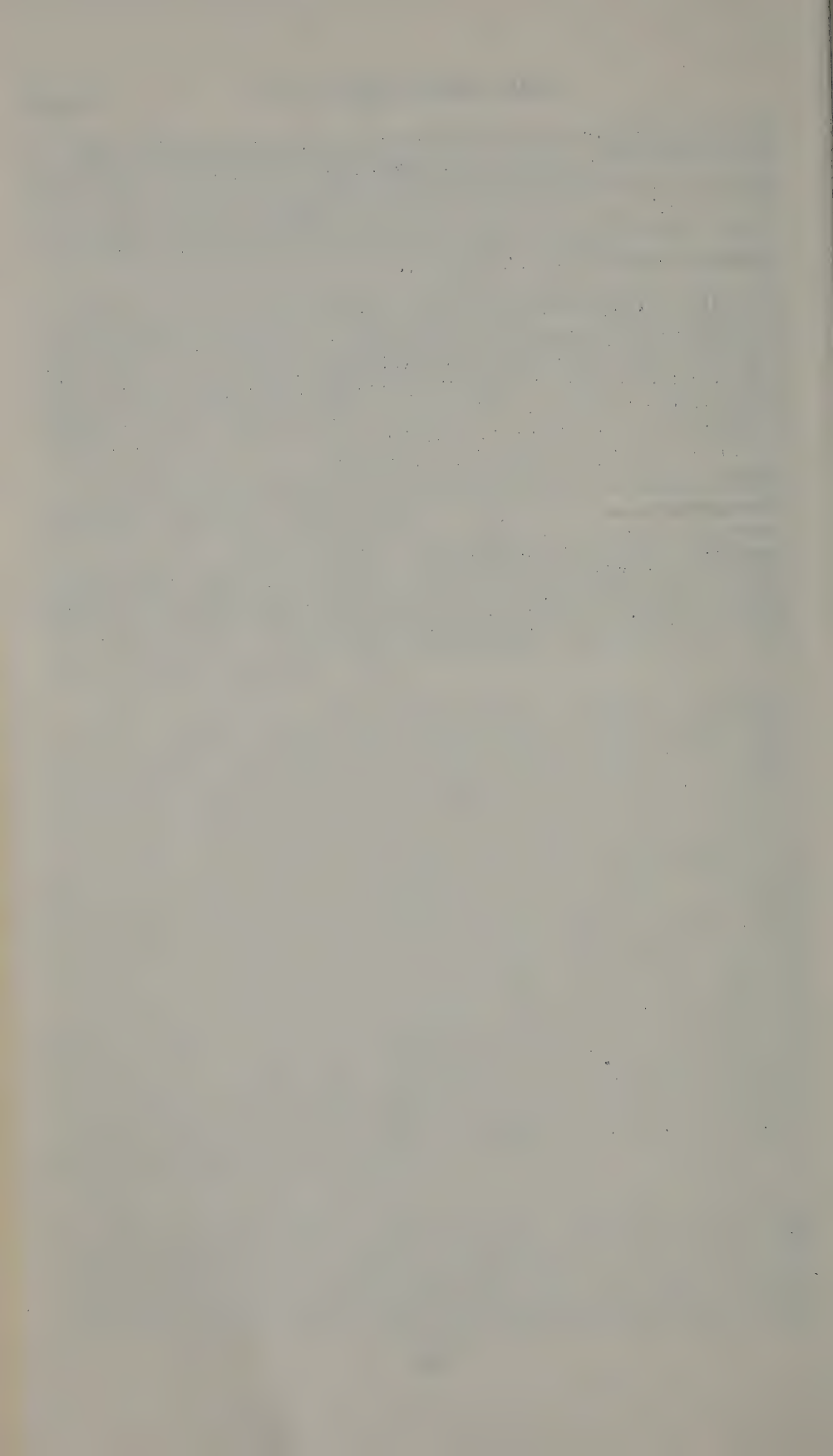
Separability Clause

Section 21 of Ch. 177, Laws 1963 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is invalid in one or more of its applications, the part

remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 22 of Ch. 177, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 5, 1963.



TITLE 53—MOTOR VEHICLES

- Chapter 1. Registration of motor vehicles—duties of registrar, 53-101, 53-102, 53-106, 53-106.1, 53-106.6, 53-106.7, 53-107 to 53-110, 53-112 to 53-115, 53-117 to 53-118.5, 53-119, 53-119.1, 53-120, 53-122, 53-129, 53-133, 53-136, 53-139, 53-139.1, 53-145 to 53-147.
4. Elimination of reckless driving—responsibility of motor vehicle owners and operators, 53-418, 53-420, 53-422, 53-432, 53-438.
5. State-owned motor vehicles—custody—regulation of use—lettering, 53-511 to 53-113.
6. Additional fees or taxes on motor vehicles, 53-626, 53-638.1, 53-642.
7. Reciprocity and proportional registration, 53-701 to 53-724.
8. Markings on trucks and heavy vehicles, 53-801 to 53-803.
9. Removal and sale of abandoned vehicles, 53-901 to 53-909.
10. Snowmobiles, 53-1001 to 53-1011.

CHAPTER 1—REGISTRATION OF MOTOR VEHICLES— DUTIES OF REGISTRAR

- Section 53-101. Duties of registrar of motor vehicles—records.
- 53-102. Penalty for violations—enforcement of provisions.
- 53-106. Number plates.
- 53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles.
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- 53-120. Replacing number plates.
- 53-122. Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees.
- 53-129. Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt.
- 53-133. Definitions.

- 53-136. Alteration or forgery of certificate of title or assignment thereof and penalty therefor.
- 53-139. Penalty for sale of vehicle with engine number altered or changed—application for special number.
- 53-139.1. Penalty for altering identification number.
- 53-145. Expiration of registration on transfer of ownership of vehicle—duty to remove plates.
- 53-146. Transfer of license plates to another motor vehicle.
- 53-147. New registration required for transferred vehicle.

53-101. (1755) Duties of registrar of motor vehicles—records. 1. The warden of the state penitentiary shall be, and is hereby constituted the registrar of motor vehicles, trailers and semitrailers, and as such it shall be his duty to keep a record as hereinafter specified of all motor vehicles, trailers and semitrailers of every kind, and certificates of registration and ownership thereof, and of all dealers in motor vehicles.

2. In the case of motor vehicles, trailers and semitrailers, the record shall show the following: Name of owner, residence by town and county, business address, name and address of conditional sales vendor, mortgagee or other lien holder and amount due under contract or lien, manufacturer of car, manufacturer's designation of style of car or vehicle, identifying number, year of manufacture, character of motive power and shipping weight of car as shown by the manufacturer and the distinctive license number assigned such car or vehicle; and, if a truck or trailer, the number of tons capacity, and such other information as may from time to time be found desirable.

3. The registrar shall file applications for registration received by him from the county treasurers of the state and register the vehicles therein described and the owners thereof in suitable books or on index cards, as follows:

(a) Under distinctive license number assigned to vehicle by the county treasurers.

(b) Alphabetically under name of owners.

(c) Numerically under make and identifying number of vehicle.

(d) Such other index of registration as registrar shall deem expedient. Vehicle registration records and indexes, and driver's license records and indexes, may be maintained by electronic recording and storage media.

4. In the case of dealers the records shall show the information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer.

5. The registrar of motor vehicles shall appoint such deputies, subordinate officers, clerks, investigators and other employees as may be necessary to carry out this act, providing there be selected as many of the clerical help from the inmates of the state prison as the registrar determines to be possible. The salaries of all such appointees shall be fixed by the registrar of motor vehicles as authorized by the state board of examiners, with respect to salaries of other subordinate state officers and employees.

6. All office equipment, books, files and records belonging to the motor department shall be in the care and general custody and con-

trol of the registrar of motor vehicles at the state penitentiary. In order to prevent an accumulation of records and files which shall have ceased to be of any value the registrar of motor vehicles shall have the authority and it shall be his duty to destroy all correspondence, motor card and application card records after the expiration of five (5) years from the date thereof, and all conditional sales contracts and chattel mortgages and records pertaining thereto shall be microfilmed and the original destroyed when the same have ceased to be liens on the motor vehicles described therein.

(7) and (8). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 75, L. 1917; re-en. Sec. 1755; R. C. M. 1921; amd. Sec. 1, Ch. 177, L. 1925; amd. Sec. 1, Ch. 129, L. 1927; amd. Sec. 1, Ch. 181, L. 1929; amd. Sec. 1, Ch. 159, L. 1933; Subdivisions 5 and 6 amd. Secs. 1, 2, Ch. 62, L. 1943; amd. Sec. 1, Ch. 208, L. 1957; amd. Sec. 22, Ch. 177, L. 1965; amd. Sec. 1, Ch. 256, L. 1965; amd. Sec. 1, Ch. 74, L. 1967; amd. Sec. 1, Ch. 115, L. 1969; amd. Sec. 1, Ch. 207, L. 1969.

Compiler's Notes

This section was amended twice in 1969, once by Ch. 115 and once by Ch. 207. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 177, Laws 1965, deleted from the beginning of subsection 5 a sentence reading, "The registrar of motor vehicles shall qualify by giving a bond of twenty-five thousand dollars (\$25,000.00), providing for the faithful performance of his duty"; and substituted "The registrar of motor vehicles" for "He" at the beginning of the present first sentence of subsection 5.

53-102. (1755.1) Penalty for violations—enforcement of provisions. The violation of any of the provisions of sections 53-101, 53-106, 53-106.1, 53-106.2, 53-106.6, 53-107, 53-108, 53-109, 53-114, 53-115, 53-116, 53-117, 53-119, 53-120 and 53-121, shall constitute a misdemeanor and shall be punishable by a fine of not exceeding twenty-five dollars (\$25.00). Nothing herein contained shall prevent the prosecution of a person for an offense committed under any other law.

It is hereby made mandatory upon all police and peace officers of the state, of the counties of the state, and of towns, cities and villages to carry out the provisions of sections 53-101, 53-106, 53-106.1, 53-106.2, 53-106.6, 53-107, 53-108 and 53-109, and sections 53-114 to 53-121.

History: En. Sec. 2, Ch. 158, L. 1931; amd. Sec. 1, Ch. 122, L. 1961; amd. Sec. 2, Ch. 256, L. 1965.

Chapter 256, Laws 1965, substituted "information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer" for "name of the applicant, his residence and address by town and county, his business address, the distinctive number assigned him, and the name or names of new cars handled by him" at the end of subsection 4.

The 1967 amendment deleted "of motor and accessories dealers and of operators and chauffeurs" after "semitrailers"; inserted "and" before "of all dealers"; and deleted "and automobile accessories and of operators and chauffeurs" after "in motor vehicles" in subsection 1.

Chapter 115, Laws of 1969, substituted "shall be microfilmed and the original destroyed when" for "after the expiration of five (5) years after the date" in subsection (6).

Chapter 207, Laws of 1969, added the second sentence to subsection (3) (d).

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

Amendment

The 1965 amendment deleted section 53-118 from the list of sections in the first sentence of the first paragraph.

53-106. (1757) **Number plates.** (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle by the registrar of motor vehicles. Such number plate shall be in eight series: one series for owners of motor cars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type, one for franchised dealers in new motor cars (including trucks and trailers) or new and used motor cars (including trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER," one for dealers in used motor cars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER," and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER," and all such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the registrar may designate. All number plates for motor vehicles shall be issued every other year, shall bear a distinctive marking, and shall be furnished by the state. In alternate years the registrar shall provide nonremovable stickers bearing appropriate registration numbers which shall be affixed to the license plates in use.

(2) In the case of motor cars, number plates shall be of metal six inches wide and twelve inches in length, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate shall be treated with a reflectorized background material according to specifications prescribed by the registrar. An additional fee of fifty (50) cents per year for each registration of a vehicle shall be added to the registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar. The distinctive registration numbers shall begin with a number one (1) or with a letter-number combination such as "A 1" or "AA 1," or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal base line, and the county number shall be separated from the distinctive registration number by a dash or a dot unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the registrar of motor vehicles, provided that all county and registration numbers shall be of equal height.

(3) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

For vehicles owned by the state the registrar of motor vehicles may designate the prefix number for the various state departments, and all

numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be renewed by the registrar of motor vehicles at such time when the physical condition of numbered plates require same. For vehicles owned by the counties, municipalities and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may designate, the letter "X" or the word "EXEMPT." Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties shall begin with number 1 and be numbered consecutively.

(4) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers, and housetrailer.

Number plates issued to a passenger car, truck, or trailer may be transferred only to a replacement passenger car, truck, or trailer.

(5) For the purpose of this act, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56; any new counties shall be assigned numbers by the registrar of motor vehicles as they may be formed, beginning with the number 57.

History: En. Sec. 3, Ch. 75, L. 1917; re-en. Sec. 1757, R. C. M. 1921; amd. Sec. 2, Ch. 158, L. 1933; amd. Sec. 1, Ch. 6, L. 1941; amd. Sec. 3, Ch. 88, L. 1943; amd. Sec. 1, Ch. 111, L. 1951; amd. Sec. 1, Ch. 29, L. 1953; amd. Sec. 1, Ch. 245, L. 1955; amd. Sec. 1, Ch. 236, L. 1957; amd. Sec. 1, Ch. 245, L. 1959; amd. Sec. 1, Ch. 245, L. 1965; amd. Sec. 1, Ch. 41, L. 1967; amd. Sec. 5, Ch. 127, L. 1969.

Amendments

The 1965 amendment substituted the second, third, and fourth sentences of subsection (2) for "Such registration plate and the required serial numbers and letters thereon, shall be of sufficient size and

spacing to be plainly readable from a distance of 100 feet during daylight. The registrar shall, in his discretion, choose to select permanent number or identification plates with a yearly insert plate or tab bearing the last two numbers of the year for which such license is issued and such insert plate or tab shall be serially numbered in the same manner as the numbered plates, and such permanent number or identification plates shall be made in such form and of such materials as the registrar shall determine; provided further, that the registrar may, in his discretion, designate number or identification plates for any year as the proper means of identifying the vehicle for a subsequent

year or years, said plates to be validated by a windshield sticker of such size, color and design and displayed as he shall direct; such sticker shall bear a distinctive number and the registration period for which it is issued, after which period it shall be unlawful to further display same on the vehicle."

The 1967 amendment substituted "issued every other year" for "renewed annually," and deleted "each year" after "marking" in the third sentence of subsection (1); added the fourth sentence of subsection (1); deleted "and the required serial numbers and letters thereon" after "registration plate" and "or numerals and border" after "material" in the second sentence of subsection (2);

substituted "motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar" for "general fund of the state of Montana" in the third sentence of subsection (2); and added "and housetrailer" after "trailers" at the end of the first sentence of subsection (4).

The 1969 amendment added the second paragraph in subsection (4).

Effective Date

Section 2 of Ch. 41, Laws 1957 provided the act should be in effect from and after its passage and approval. Approved February 16, 1967.

53-106.1. Registration of motor vehicles owned and operated solely as collectors' items—number plates for such motor vehicles. Any owner of a motor vehicle manufactured more than thirty (30) years prior to the year 1963, solely as a collectors' item and not for general transportation purposes may file with the registrar of motor vehicles an application for the registration of such motor vehicle stating the name and address of the owner, the name and address of the person from whom purchased, the make of the motor vehicle, the gross weight thereof, the year and number of the model, and the manufacturer's identification number and serial number, and setting forth a specific statement that the vehicle is owned and operated solely as a collectors' item and not for general transportation purposes; and said application shall be sworn to before an officer authorized to administer oaths. The registration fee for all such motor vehicles weighing twenty-eight hundred and fifty (2850) pounds or less shall be five dollars (\$5.00), and the registration fee for all such motor vehicles weighing more than twenty-eight hundred and fifty (2850) pounds shall be ten dollars (\$10.00).

Upon receipt of said application for registration and payment of the registration fee above provided for the registrar shall file said application and register the motor vehicle therein described in the manner specified in section 53-101, and shall deliver to the applicant two (2) license plates bearing the inscription, "Pioneer—Montana" and the registration number, but the year of issuance shall not be shown thereon. No annual renewal of the registration of any such motor vehicle shall be required, and the same shall be valid as long as the vehicle is in existence; provided, however, that upon any sale of such motor vehicle, the purchaser shall be required to renew the registration thereof and pay the license fees hereinbefore specified.

History: En. 53-106.1 by Sec. 1, Ch. 123, L. 1955; amd. Sec. 1, Ch. 86, L. 1963.

Amendment

The 1963 amendment substituted "thirty

(30) years prior to the year 1963" in the first part of the first paragraph for "thirty (30) years prior to the date of the application referred to hereunder."

53-106.6. Special plates—how affixed to car—sale or transfer of auto—revocation or expiration of radio license. The lettered license plates,

as herein provided, are to replace the regular license plates on the motor vehicle owned by said amateur radio licensee for such period of time as the amateur radio license is in force under the federal communications commission and the special license issued hereunder is in force, but no longer. Whenever such official amateur radio license is revoked or expires for whatever reason, such license plate shall be removed immediately by the owner of the motor vehicle and the regular plates again placed or mounted on the motor vehicle as in other cases. When the motor vehicle is sold or otherwise transferred, the owner and holder of valid official amateur radio station and operator's license shall have the right to transfer the lettered plates to another motor vehicle owned by him upon such reasonable conditions as may be prescribed by the registrar. On the revocation or expiration of the amateur radio station and operator's licenses, the lettered license plates as issued shall be returned and surrendered to the registrar of motor vehicles.

History: En. Sec. 5, Ch. 2, L. 1957; amd. Sec. 4, Ch. 62, L. 1959; amd. Sec. 6, Ch. 127, L. 1969.

Amendments

The 1969 amendment deleted a requirement that "the regular number plates shall be mounted on the motor vehicle" upon the transfer or sale of a motor vehicle.

53-106.7. Distinctive plates for national guardsmen. In addition to the regular license plates prescribed by law, there may be issued to each active member of the Montana national guard, distinctive license plates, bearing the words "national guard" and "Montana," said plates to be numbered in sets of two with a different number following the letters "NG." Plates shall be furnished by the registrar of motor vehicles to the adjutant general, and by him, issued to the members of the active guard. The adjutant general shall inform the said registrar of each set so issued, giving the number of the license, the name, unit and home address of the member to whom issued, and shall be responsible for the recovery of said plates and notification to the registrar upon the member becoming ineligible to use them. Plates so issued shall be placed or mounted on the vehicle over the regular license plate, and shall be removed upon sale or other disposition of the vehicle. Said distinctive plates shall be renewed every five (5) years or when lost, destroyed or damaged.

History: En. Sec. 1, Ch. 135, L. 1965; amd. Sec. 1, Ch. 114, L. 1967.

Title of Act

An act to provide for distinctive license plates for motor vehicles owned by active members of the Montana national guard.

Amendments

The 1967 amendment substituted "every five (5) years or when lost, destroyed or damaged" for "concurrently with the issuance of the regular motor vehicle license plates" at the end of this section.

53-107. (1758) Certificates of registration and ownership—contents, issuance, entry, assignment of numbers—owner's registration receipt to be signed, carried and exhibited on demand. Upon completion of the application for registration, in quintuplet, on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two (2) copies of the application marked "Owner's Cer-

tificate of Registration and Tax Receipt," one (1) of which shall be marked "file copy," and forward one (1) copy of the application to the registrar of motor vehicles who shall cause to be entered the information contained in said application upon the corresponding records of his office and shall furnish the applicant a certificate of ownership, and said owner shall at all times retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation. In the event the said certificate of ownership be in the possession or under the control of any person other than the person entitled to operate and possess the motor vehicle the same must be surrendered to the person entitled to operate and possess such motor vehicle, upon demand, and refusal shall constitute a misdemeanor. At the same time, he shall issue to any conditional sales vendor, or other person holding the legal title to the vehicle, or any mortgagee thereof, or other lien holder, a statement of the filing of such conditional sales contract, mortgage or other lien, said certificate of registration and ownership shall meet the following requirements:

The certificate of registration and the certificate of ownership shall each contain upon the face thereof: (1) the date issued, (2) the registration number assigned to the owner and the vehicle, (3) the name and complete address of the owner and the name and complete address of any conditional sales vendor, and also the name and address of any other lienor as shown by said application, (4) a description of the registered vehicle including the year built and serial number, if any, (5) any lien against such motor vehicle and the amount due at the date of registration, and such other statement of facts as may be determined by the registrar.

Upon receipt of the application the registrar shall make a recheck of the application and in the event that there is any error in the application it may be returned to the county treasurer to effectively secure the correction of such error, who shall return the same to the registrar of motor vehicles.

The reverse side of the certificate of ownership shall contain a form of notice to the registrar of a transfer of title or interest of the owner and such other statement on forms as may be determined by the registrar.

File copy of owner's certificate of registration receipt to be signed, carried, and exhibited on demand. Every owner, upon receiving a registration receipt shall write his signature thereon with pen and ink in the space provided. Every such registration receipt or a notarized photostatic copy thereof or a duplicate thereof furnished by the registrar of motor vehicles shall at all times be carried in the vehicle, to which it refers or shall be carried by the person driving or in control of such vehicle, who shall display the same upon demand of a police officer or any officer or employee of the registrar of motor vehicles or the highway department.

The term "motor vehicle" includes automobile, truck, motorcycle, and semitrailer, trailer and trailer-house.

Any trailer, semitrailer or trailer-house which does not have a manufacturer's or other identifying number thereon shall be assigned an identification number by the registrar upon registration of such motor vehicle. The owner or other person lawfully in possession of such motor vehicle shall stamp such number so assigned by the registrar upon the principal right frame member of said motor vehicle near the front end thereof where it may be clearly and readily seen, and said stamping shall be promptly accomplished after notice of the assigned number by the registrar. The registrar may withhold registration until satisfactory proof by affidavit, of such stamping is filed with him.

Any person violating this section shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding twenty-five dollars (\$25.00).

History: En. Sec. 4, Ch. 75, L. 1917; re-en. Sec. 1758, R. C. M. 1921; amd. Sec. 2, Ch. 159, L. 1933; amd. Sec. 5, Ch. 72, L. 1937; amd. Sec. 1, Ch. 148, L. 1943; amd. Sec. 1, Ch. 63, L. 1945; amd. Sec. 1, Ch. 115, L. 1953; amd. Sec. 1, Ch. 200, L. 1955; amd. Sec. 1, Ch. 139, L. 1961; amd. Sec. 7, Ch. 127, L. 1969.

Amendments

The 1969 amendment deleted exceptions relating to the owners of passenger cars, pickups and farm trucks in the fifth paragraph of the section.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-108. (1758.1) Renewal of registration. Every vehicle registration under this act shall expire on December thirty-first of each year and shall be renewed annually upon application and payment of license fees, as provided in sections 53-114 and 53-122, such renewal to take effect on the first day of January of each year. The certificate of registration issued hereunder shall be valid during the registration year only for which issued, and the certificates of ownership shall remain valid until canceled by the registrar of motor vehicles upon a transfer of any interest shown therein and need not be renewed annually. Upon annual renewal, whenever the legal owner of the vehicle is other than the registered owner, the registrar of motor vehicles shall immediately notify such legal owner by mail of the registration number assigned to such vehicle for the ensuing year.

The owner of a vehicle registered under the provisions of this act shall be entitled to operate such vehicle between January first and February fifteenth without displaying the registration certificate of the current year, on condition that such owner shall, during said period, display upon such vehicle the number plates or plate assigned thereto for the previous year.

Any purchaser of a motor vehicle which has not been registered or reregistered for the current year may during the time the certificate of ownership thereto is in the process of being transferred in the office of the registrar of motor vehicles, upon making an affidavit to that effect upon a form prescribed by the registrar of motor vehicles and upon the payment of a fee of two dollars (\$2.00) to be collected by the county

treasurer and remitted to the registrar of motor vehicles, obtain from the county treasurer of the county in which said vehicle is subject to tax a temporary windshield sticker of such size, color and design as the registrar of motor vehicles may prescribe, to be validated by the county treasurer for a period of sixty (60) days from the date of issuance, and such purchaser, upon displaying such sticker on the lower right-hand corner of the windshield of such motor vehicle shall be entitled to operate such vehicle during the period for which such windshield sticker has been validated without displaying the registration certificate or number plates or plate for the current year. Provided, however the county treasurer shall not sell, or no person shall purchase more than one (1) sixty (60) day temporary windshield sticker for any vehicle, the ownership of which has not changed since the issuance of the previous sixty (60) day windshield sticker. Provided, further, however, that any purchaser of a new or used motor vehicle from a duly licensed motor vehicle dealer shall have the grace period of ten (10) days from the date of purchase to make such application for registration and obtain registration plates, and it shall not be a violation of this chapter or any other law for such purchaser to operate such new or used motor vehicle upon the streets and highways of this state without a certificate of registration and registration plates during the said ten-day period; providing further that such purchaser must have in his possession a valid bill of sale or other satisfactory evidence of ownership.

History: En. Subd. 2, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 244, L. 1955; amd. Sec. 1, Ch. 146, L. 1957; amd. Sec. 1, Ch. 100, L. 1959; amd. Sec. 25, Ch. 121, L. 1965; amd. Sec. 1, Ch. 116, L. 1969; amd. Sec. 8, Ch. 127, L. 1969.

Compiler's Notes

This section was amended twice in 1969, once by Ch. 116 and once by Ch. 127. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments.

Amendments

The 1965 amendment increased the fee specified in the first sentence in the third paragraph from \$1.00 to \$2.00; and substituted "registrar of motor vehicles" for "board" in two places in the same sentence.

Chapter 116, Laws of 1969, in the third paragraph, deleted "from a duly licensed motor vehicle dealer" after "Any purchaser of a motor vehicle" and substituted "sixty (60) days" for "thirty (30) days" where the references appear.

Chapter 127, Laws of 1969, in the third paragraph, deleted "and upon displaying the number plates or plate assigned thereto for the previous year (unless the seller has been unable to deliver such previous year's plate or plates)" after "windshield of such motor vehicle," inserted "or used" before "motor vehicle" where the references appear, and substituted "ten (10) days" and "ten-day period" for "three (3) days" and "three-day period."

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 241 M 155, 382 P 2d 174.

53-109. (1758.2) Transfer of title or interest. (a) to (d). * * *
[Same as parent volume.]

(e) In the event of a transfer by operation of law of any title or interest of an owner of the legal title or owner in and to a motor vehicle as upon inheritance, devise or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act

of the person whose title or interest is so transferred, the executor, administrator, receiver, trustee, sheriff or other representative or successor in interest of the person whose title or interest is so transferred shall forward to the registrar of motor vehicles an application for registration in the form required for an original application for registration, together with a verified or certified statement of the transfer of such title or interest which statement shall set forth the reason for such involuntary transfer, the title or interest so transferred, the name or names of the person or persons to whom such title or interest is to be transferred, the process of procedure effecting such transfer and such other information as may be requested by the registrar and with such statement shall be furnished such evidence and instruments as may otherwise be required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases, and in the event the registrar shall be satisfied that such transfer is regular and that all formalities as required by law have been complied with, he shall cause to be sent to the owner, conditional sales vendors, lessors, mortgagees and other lienors, as shown by his records notice of such intended transfer and thereafter, but not less than five (5) days thereafter, shall register such motor vehicle and shall issue a new certificate of ownership and certificate of registration to the person or persons entitled thereto. The notice herein required shall be deemed complied with by deposit in the post office in Deer Lodge, Montana, such notice, postage prepaid, addressed to such person or persons at the respective addresses shown on his records.

When the vehicle title that is involuntarily transferred is not registered in this state the procedure set forth above must be followed in applying for a new certificate of ownership and certificate of registration, but the registrar need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled thereto.

In the event of the death of an owner of one or more motor vehicles and/or trailer, and/or semitrailer, and/or trailer-house registered hereunder and not exceeding the value of four thousand dollars (\$4,000), without leaving other property necessitating the procuring of letters of administration or letters testamentary, then the surviving husband or wife, or other heir, unless such property is by will otherwise bequeathed, may secure transfer of the certificate of ownership and the certificate of registration of the deceased, in and to such motor vehicle in the name of the surviving husband or wife or other heir, as above mentioned, upon filing with the registrar an affidavit of such person setting forth the fact of survivorship and the name and address of any other heirs and such other facts as are hereby made necessary to entitle the affiant to a transfer and thereupon the registrar is authorized to make such transfer of the certificate of ownership and certificate of registration, subject to all contracts, leases, mortgages, or other liens as shown by his records.

Nothing in the foregoing subdivision of this section shall prevent any conditional sales vendor, mortgagee, or other lienor from assigning his interest or title in or to a motor vehicle registered under the provisions of this act to any other person without the consent of and without effect-

ing the interest of the holder of the certificate of ownership and certificate of registration. Upon any conditional sales vendor, mortgagee, or other lienor assigning his interest in any motor vehicle registered under this act a copy of such assignment must be filed with the registrar and record thereof made upon his records.

(f). * * * [Same as parent volume.]

History: En. Subd. 3, Sec. 2, Ch. 159, L. 1933; amd. Sec. 6, Ch. 72, L. 1937; amd. Sec. 2, Ch. 148, L. 1943; amd. Sec. 2, Ch. 63, L. 1945; amd. Sec. 1, Ch. 191, L. 1967; amd. Sec. 1, Ch. 213, L. 1969.

Amendments

The 1967 amendment, in subsection (e), deleted "registered under the provisions of this act" after "motor vehicle" near the beginning of the first paragraph; and added the present second paragraph.

The 1969 amendment substituted "four thousand dollars (\$4,000)" for "one thousand dollars (\$1,000.00)" in the third paragraph of subsection (e).

Incomplete Transfer

Chattel mortgages given for the purchase of an automobile were without consideration where vendor failed to obtain certificates of registration and ownership from the registrar of motor vehicles which were necessary to pass title to the buyer. *Sonnek v. Universal C.I.T. Credit Corp.*, 140 M 503, 374 P 2d 105, 108, explained in 142 M 155, 382 P 2d 174.

Where neither buyer nor auto dealer made any attempt to comply with this section, there was no transfer of ownership of damaged auto even though it had been in the possession of buyer for several days after the agreement to buy, and dealer's insurer, not buyer's, was primarily liable for damages to the auto. *Safeco Ins. Co.*

of *America v. Northwestern Mutual Ins. Co.*, 142 M 155, 382 P 2d 174, distinguished in 227 F Supp 978, 981.

Where buyer paid entire purchase price of automobile to seller, he took possession thereof as a "nonowned automobile" under liability policies of buyer extending coverage to operation of nonowned automobiles by insured or any relative, the transfer not complying with this section because of failure of seller to sign transfer on certificate of title and because no new certificate of title had been issued to buyer. *Colbrese v. National Farmers Union Property & Casualty Co.*, 227 F Supp 978, 982.

Noncompliance as Affecting Insurance Coverage

Since only effect of the statute is that legal title to automobile cannot pass to voluntary transferee in absence of compliance, automobile paid for and possessed by insured was owned within meaning of insurance policy; despite insurance company's contention that since insured had failed to comply with statute he did not hold legal title to automobile and hence was not "owner" for purpose of coverage. *National Farmers Union Property & Casualty Co. v. Colbrese*, 368 F 2d 405.

References

Interstate Mfg. Co. v. Interstate Products Co., 146 M 449, 408 P 2d 478.

53-110. (1758.3) Filing of liens, rights, procedure, fees. (a). * * *
[Same as parent volume.]

(b) Satisfactions or statements of release filed with the registrar of motor vehicles under this act shall be retained by him for a period of eight (8) years after receipt, after which they may be destroyed. Chattel mortgages, conditional sales contracts, leases, or other liens filed with the registrar, and all renewals and assignments thereof, shall be retained by him for a period of eight (8) years after the maturity date stated in such mortgage, conditional sales contract, lease, or other lien, or renewal, or if no maturity date is therein stated, for a period of thirteen (13) years after receipt, after which they may be destroyed.

(c) From and after the filing of any mortgage, conditional sales contract, lease, or other lien, or copy thereof on any motor vehicle, as herein provided, then and in that event such mortgage, conditional sales contract, lease or other lien shall be constructive notice of the said mort-

gage, conditional sales contract, lease or other lien and its contents to subsequent purchasers and encumbrancers.

(d) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle the mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available upon delivery to the sheriff of the original instrument or a copy certified by the registrar of motor vehicles and such undertaking as may be required by the sheriff. In case of attachment of motor vehicles all the provisions of section 93-4338 shall be applicable except that deposits must be made with the registrar of motor vehicles.

(e) In the event any conditional sales vendor or assignee or chattel mortgagee or assignee fails to file a satisfaction of a chattel mortgage, assignment or conditional sales contract within fifteen days after receiving final payment on such mortgage, assignment, or conditional sales contract he shall be required to pay the registrar of motor vehicles the sum of one dollar (\$1.00) for each and every day thereafter that he fails to file such satisfaction.

(f) and (g). * * * [Same as parent volume.]

(h) A fee of two dollars (\$2.00) shall be paid to the registrar of motor vehicles upon and for filing any lien or lien instrument against any motor vehicle, and said fee of two dollars (\$2.00) shall further include and cover the cost of filing a satisfaction or release of the lien or lien instrument, and, also, the cost of endorsing such satisfaction or release on the face of the certificate of ownership or on the records of the registrar, or both. A fee of two dollars (\$2.00) shall be paid the registrar of motor vehicles for issuing a certified copy of a chattel mortgage, conditional sales contract or other lien, or instrument of encumbrance on file in the office of the registrar, or for filing any assignment of any instrument on file with the registrar. All fees provided for in this section shall be deposited by the registrar in the earmarked revenue fund.

History: En. Subd. 4, Sec. 2, Ch. 159, L. 1933; amd. Sec. 7, Ch. 72, L. 1937; amd. Sec. 3, Ch. 148, L. 1943; amd. Sec. 3, Ch. 63, L. 1945; amd. Sec. 11-143, Ch. 264, L. 1963; amd. Sec. 26, Ch. 121, L. 1965.

Amendments

The 1963 amendment completely rewrote subsection (b), for previous text of which see parent volume; inserted "or conditional sales contract" near the beginning of subsection (d); substituted "mortgagee or vendor has the same remedies as in the case of other personal property, except that the remedy of seizure prescribed by section 52-312 shall be available" in subsection (d) for "mortgagee may foreclose his mortgage as in the case of other personal property, and upon default under a conditional sales contract covering a motor vehicle the vendor shall have the remedies prescribed by section

74-207"; substituted the reference to section 93-4338 in the latter part of subsection (d) for a reference to section 52-309; deleted the words "instead of the county treasurer" from the end of subsection (d); and made minor changes in phraseology and punctuation in subsection (d).

The 1965 amendment deleted from the end of subsection (e) a sentence reading "All moneys paid to the registrar of motor vehicles under this section shall revert to the automobile theft fund"; increased the fees in subsection (h) for filing liens and releases from \$1.00 to \$2.00, for certified copies from 50¢ to \$2.00, and for filing assignments from 50¢ to \$2.00; and added the last sentence to subsection (h).

Notice of Prior Interest

Where auto repairman failed to ascertain true ownership of auto before making repairs, the filing of conditional sales con-

tract with the registrar of motor vehicles by assignee prior to repairman's lien established a dominant interest under sub-

section (c) of this section. *Williamson v. Skerritt*, 141 M 422, 378 P 2d 215.

53-112. (1758.4) Fee for original certificate of ownership and transfer of title. A charge of two dollars (\$2.00) shall be made for issuance of an original certificate of ownership of title and for a transfer of registration which shall be collected by the county treasurer. The fees shall be distributed as follows:

(a) One dollar (\$1.00) of each fee shall be remitted to the registrar of motor vehicles by the county treasurer with each application for original certificate of ownership or transfer of registration.

(b) Prior to March 1, 1966 and each March thereafter, the county commissioners of each county shall divide the fees retained by the county to

(i) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town, and

(ii) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns.

History: En. Subd. 5, Sec. 2, Ch. 159, L. 1933; amd. Sec. 8, Ch. 72, L. 1937; amd. Sec. 27, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified in the first sentence from \$1.00 to \$2.00; inserted "and for a transfer of registration" in the first sentence; deleted "for the registrar of motor vehicles the first time any vehicle is registered by any owner" from the end of the first sentence; and substituted the second sen-

tence and paragraphs (a) and (b), including subparagraphs (i) and (ii), for sentences reading, "Said charge of one dollar (\$1.00) shall be remitted to the registrar of motor vehicles by the county treasurer with each application for registration. Upon a transfer of registration by the owner, there shall be forwarded to the registrar of motor vehicles, the certificate of ownership or title and registration card, properly filled out and executed, together with a transfer fee of one dollar (\$1.00)."

53-113. (1758.5) Lost certificates. In the event any certificate of registration or ownership shall be lost, mutilated or become illegible, the person to whom the same shall have been issued shall immediately make application for and may obtain a duplicate thereof, upon furnishing satisfactory information to the registrar of such facts and upon payment of a fee of two dollars (\$2.00).

History: En. Subd. 6, Sec. 2, Ch. 159, L. 1933; amd. Sec. 1, Ch. 96, L. 1953; amd. Sec. 28, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified at the end of the section from \$1.00 to \$2.00.

53-114. (1759) Application for registration of motor vehicles and payment of license fees thereon—assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise. (1). * * * [Same as parent volume.]

(2) Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R.C.M. 1947, shall before filing such application with the county treasurer submit the same to the county assessor of said county and said county

assessor shall enter on said application in a space to be provided for that purpose, the full and true and the assessed valuation of said vehicle for the year for which said application for registration is made.

(3) Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R.C.M. 1947, shall upon the filing of said application (1) pay to the county treasurer the registration fee, as provided in section 53-122 and section 53-115, and shall also at such time (2) pay the personal property taxes assessed or the new motor vehicle sales tax against said vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration or reregistration may be accepted by the county treasurer. The county treasurer is hereby empowered to make full and complete investigation of the tax status of said vehicle and any applicant for registration or reregistration must submit proof with respect thereto from the tax records of the proper county at the request of the county treasurer.

(4) The amount of taxes on said motor vehicle, except a mobile home as defined in section 84-101, R.C.M. 1947, shall be computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration and such determination shall be entered on the application form in a space provided therefor.

(5) Motor vehicles, except mobile homes as defined in section 84-101, R.C.M. 1947, are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana, provided that in no event shall any motor vehicle be subject to assessment, levy and taxation more than once in each year.

(6) The applicant for original registration of any wholly new and unused motor vehicle except a mobile home as defined in section 84-101, R.C.M. 1947, acquired by original contract after the first day of January of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by section 32-3315, R.C.M. 1947, irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year.

(7) Upon accepting application for registration or reregistration of any motor vehicle which is subject to taxation in this state on January 1 in any year, and upon payment of taxes, the county treasurer shall stamp on said application: "taxes on this vehicle due January 1 of current year paid by applicant, prior applicant or owner and this vehicle is eligible for registration."

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application.

(8) The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the facts.

History: En. Sec. 5, Ch. 75, L. 1917; amd. Sec. 1, Ch. 207, L. 1919; re-en. Sec. 1759, R. C. M. 1921; amd. by repeal Subd. 4, Sec. 22, Ch. 113, L. 1925; amd. Sec. 2, Ch. 181, L. 1929; amd. Sec. 1, Ch. 158, L. 1931; amd. Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 72, L. 1937; amd. Sec. 1, Ch. 195, L. 1953; amd. Sec. 1, Ch. 256, L. 1955; amd. Sec. 1, Ch. 223, L. 1957; amd. Sec. 1, Ch. 245, L. 1963; amd. Sec. 1, Ch. 290, L. 1967; amd. Sec. 9, Ch. 296, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 290 and once by Ch. 296. Neither amendatory act referred to or incorporated the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section embodying the amendments made by both 1967 acts.

Amendments

The 1963 amendment deleted the words "except as hereinafter provided" which followed "Motor vehicles" at the beginning of subsection (5); deleted from the end of subsection (5) a proviso reading, "and provided, further, that new motor vehicles, and used motor vehicles which have not previously been assessed and licensed during the current year, when held for sale in the stock of any duly licensed motor vehicle dealer or used motor vehicle dealer, are hereby declared to be merchandise and shall be assessed as of the first Monday in March in each year in the same manner as other stocks of merchandise"; and deleted from the end of the second paragraph of subsection (7) a clause reading, "and in case such motor vehicle shall have been assessed for taxation as a part of the stock of merchandise of a licensed dealer, the county treasurer shall indicate such fact by proper entry on said application, and the applicant for registration shall not be required to pay the personal property tax on any motor vehicle so assessed as merchandise."

Chapter 290, Laws of 1967, inserted "or the new motor vehicle sales tax" after "taxes assessed" in the first sentence of subdivision (3).

Chapter 296, Laws of 1967, in subsection (2), added "Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M. 1947, shall" at the beginning of the subsection and deleted "the applicant shall" before "submit the same"; in subsection (3), substituted "Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R. C. M. 1947, shall" for "The applicant shall" before "upon the filing of" at the beginning of the subsection; in subsection (4), inserted "except a mobile home as defined in section 84-101, R. C. M. 1947" after "said motor vehicle"; in subsection (5), inserted "except mobile homes as defined in section 84-101, R. C. M. 1947" after "Mobile vehicles" near the beginning of the subsection; in subsection (6), inserted "except a mobile home as defined in section 84-101, R. C. M. 1947" after "unused motor vehicle" and substituted "section 32-3315, R. C. M. 1947" for "section 53-617" after "tax provided by."

Separability Clause

Section 10 of Ch. 296, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-115. (1759.1) Time for making application. Registration must be renewed annually and license fees paid annually. All registrations expire on December 31 of the year in which they are issued and application for registration, or reregistration, must be filed with the county treasurer as aforesaid not later than February 15 of each year. Provided, however, that in the event of transfer of a motor vehicle during the registration year, such motor vehicle shall be reregistered and relicensed as provided by statute.

History: En. Subd. 2, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 51, L. 1967; amd. Sec. 9, Ch. 127, L. 1969.

Amendments

The 1967 amendment changed the late date for registration or reregistration from February 1 to February 15.

The 1969 amendment added the proviso.

53-117. (1759.3) Disposition of taxes. The county treasurer shall credit all taxes on motor vehicles so collected to a motor vehicle suspense fund and, at some time between March 1 and March 10 of each year, and every sixty (60) days thereafter, the county treasurer shall distribute the same in relative proportions required by the levies for state, county, school district and municipal purposes in the same manner as other personal property taxes are distributed.

History: En. Subd. 4, Sec. 1, Ch. 158, L. 1933; amd. Sec. 4, Ch. 72, L. 1937; amd. Sec. 1, Ch. 154, L. 1943; amd. Sec. 1, Ch. 200, L. 1945; amd. Sec. 29, Ch. 121, L. 1965.

Amendment

The 1965 amendment deleted from the end of the section sentences reading, "All motor vehicle license fees collected by the county treasurer shall be credited to the motor vehicle license fund hereby established. The cost of making and delivering license plates and identification marks, certificates, and all other expense of oper-

ating the motor vehicle department of the state of Montana, shall be paid out of the motor vehicle recording fund (sometimes called the motor vehicle administrative fund); provided, however that each county shall receive its pro rata share of any license fees, except dealer license fees, paid to the registrar of motor vehicles. The remainder in said county motor vehicle license fund shall be transferred by the county treasurer at the end of each month to the road fund of said county and shall be used by the county for the purpose set forth in section 53-122."

53-118. (1759.4) Application for dealer's license. Every person, firm, corporation, or association who, for commission or profit, engages in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, used motor vehicles, trailers, (except trailers having an unladen weight of less than five hundred (500) pounds or semitrailers and qualifies under subparagraph (f) of this section, shall cause to be filed, by mail or otherwise, in the office of the registrar of motor vehicles, a verified application for licensing as a dealer on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein required. The application and all of the information therein contained shall be verified by the Montana highway patrol. Each application must be accompanied by the license fee hereinafter named. Dealers license must be renewed and paid for annually, and an application for relicensing must be filed not later than January first of each year. To qualify for licensing and the issuance and use of "D," "UD," or "DTR" plates, as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

- (a) The name under which the business is conducted;
- (b) Location of premises (street, address, city, county and state) where records are kept, sales are made and stock of motor vehicles displayed;
- (c) Name and address of all owners or persons having an interest in the business; provided, however, that in the case of a corporation, the names and addresses of the president and secretary thereof will be sufficient;

(d) Name and make of all vehicles handled, if factory franchised or selling under a written agreement with a manufacturer, importer or distributor;

(e) Whether or not used vehicles are handled exclusively;

(f) A certificate to the effect that the applicant is a bona fide dealer in motor vehicles, trailers or semitrailers; and that the applicant if a dealer in new motor vehicles, is recognized by a manufacturer, importer or distributor as a dealer in particular makes of new motor vehicles.

(g) Other information required by the registrar to efficiently administer this law.

The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of five thousand dollars (\$5,000), and the bond shall be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds shall run to the state of Montana and shall be approved by the registrar of motor vehicles and filed in his office and shall be renewed annually.

The registrar of motor vehicles shall not register or license as a dealer any applicant for the sale of new motor vehicles at retail unless such applicant owns, leases or rents a permanent building wherein he shall conduct his business and who has a dealers franchise from a manufacturer of motor vehicles. A private residence, tent, or temporary building is not a sufficiently permanent place of business within the meaning of this section. The registrar of motor vehicles shall not register or license any applicant as a dealer in used cars unless such applicant furnishes sufficient evidence to the registrar that he has a building or lot to provide display of merchandise, a sign indicating the firm name and headquarters as the principal place of the business.

Upon making such application, the applicant shall pay to the registrar of motor vehicles, in addition to the fees required of dealers under the provisions of section 53-122, a fee of five dollars (\$5). Upon receipt of the application, fee and bond, as provided above, the registrar of motor vehicles shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the registrar of motor vehicles is satisfied that the applicant qualifies for the issuance of a dealer's license under the provisions of this act, he may thereupon issue the same.

Every dealer licensed under this section shall keep a book or record of the purchase, sale or exchange or receipt for the purpose of sale, of any used vehicle, a description of such vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom such vehicle was purchased or received, or to whom it was sold or delivered, as the case may be. Such description in the case of motor vehicles shall also include the engine number, if any, the maker's number, if any, chassis number, if any, and such other numbers or identification marks as may be thereon, and shall include a statement that a number has been obliterated, defaced or changed, if such is the fact. In the case of a trailer or semitrailer, the record shall include the manufac-

turer's number and such other numbers or identification marks as may be thereon. He shall also have in his possession a duly assigned certificate of title from the owner of said motor vehicle in accordance with the provisions of another section of this act, from the time when the motor vehicle is delivered to him until it has been disposed of by him.

Upon the licensing of a dealer as a new motor vehicle dealer, used motor vehicle dealer, or trailer or semitrailer dealer, the registrar of motor vehicles shall assign to such dealer a distinctive serial license number as a dealer and furnish every qualified dealer in motor vehicles with not less than two (2) sets of number plates, and as many more as the fee the dealer pays entitles the dealer to, which number plates shall be similar to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter "D" if the dealer sells new motor vehicles (including trucks and trailers) or new and used motor vehicles (including trucks and trailers); the letters "UD" if the dealer sells used motor vehicles (including trucks and trailers) only; and the letters "DTR" if the dealer sells trailers and/or semitrailers (new or used) only. Only new motor vehicle dealers' license plates bearing the letter "D" shall be assigned if both new and used motor vehicles (including trucks and trailers) are sold, and only one license fee shall be required of any one dealer. The registrar of motor vehicles shall cause to be placed on each set of license plates issued to a dealer, a serial number assigned to each dealer and the actual number of license plates issued to each dealer. The number of the dealer shall follow the prefix of the county, and the number of plates issued the dealer shall follow the prefix of the county and the number of the dealer, the dealer's number to be separated from the county prefix by a dash, and the number of plates issued to a dealer to be separated from the dealer's number by a dash, as follows: Dealer number 4 in Lewis and Clark County would be numbered 5-4, and if the dealer were issued three sets of plates, they would be numbered consecutively as follows, 5-4-1, 5-4-2, and 5-4-3. Dealers properly licensed under this section are authorized to use and display, dealer's license plates on any motor vehicle held for sale or used principally in the conduct of the dealer's business in selling or demonstrating motor vehicles. No dealer's license plate shall be used or displayed on vehicles normally used for hire, lease or rental or for purposes not incident to the business of a motor vehicle dealer. If it shall appear to the satisfaction of the registrar of motor vehicles, from information furnished to him by the sheriff or any other law enforcement officer, that any such dealer has been improperly licensed, has used the dealer's license in a manner other than the one permitted above, or is not qualified as a dealer under the requirements of this section, the registrar of motor vehicles may revoke such dealer's license. No person, firm, corporation or association shall, for commission or profit, engage in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, trailers or semitrailers unless duly licensed in compliance with this section (except trailers having an unladen weight of less than five hundred (500) pounds).

Any person violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not less than two hundred and fifty (\$250) dollars and not more than five hundred (\$500) dollars. For the purposes hereof, every sale of a motor vehicle in violation of the provisions of this section shall be deemed a separate offense.

History: En. Subd. 5, Sec. 1, Ch. 158, L. 1933; amd. Sec. 2, Ch. 72, L. 1937; amd. Sec. 2, Ch. 245, L. 1955; amd. Sec. 3, Ch. 256, L. 1965; amd. Sec. 1, Ch. 354, L. 1969.

Amendments

The 1965 amendment completely rewrote this section. For previous text, see parent volume.

The 1969 amendment, in the first paragraph, inserted "except trailers * * * pounds" after "trailers" in the first sentence, substituted "Montana highway patrol" for "sheriff of the county in which the business is to be conducted, as designated in subparagraph (b) below" in the

second sentence and deleted a third sentence which read "A fee of two dollars (\$2) shall be paid to the sheriff for such verification"; in the second paragraph, substituted "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000.00)" and added "and shall be renewed annually"; in the sixth paragraph inserted the third and fourth sentences, deleted "exclusively" before "for hire" and inserted "lease or rental" in the sixth sentence, and added "except trailers * * * pounds" at the end of the eighth sentence; and, in the seventh paragraph changed the minimum fine from \$50 to \$250 and the maximum fine from \$300 to \$500.

53-118.1. Demonstration of trucks and trailers authorized—dealer's plate to be used. A new or used truck or trailer dealer licensed under the provisions of section 53-118 may demonstrate to a prospective purchaser any truck, truck tractor, trailer or semitrailer, owned by or consigned to said dealer, or otherwise controlled by said dealer, by payment of the fees required in this section; provided the vehicle displays the dealer's registration plate or other current Montana registration and the demonstration permit provided in section 2 [53-118.2] of this act.

History: En. Sec. 1, Ch. 36, L. 1965.

Title of Act

An act to permit the movement of trucks and trailers for demonstration purposes; providing for a permit therefor;

providing for the fee for such permit; providing for the issuance, validation and duration of such permits; providing for a penalty and providing for the disposition of fees.

53-118.2. Application for truck demonstration permit—form and contents—number of permits authorized. The licensed dealer shall obtain the demonstration permit upon application to the Montana highway commission and payment of eight (\$8) dollars for each permit and the payment of this fee shall be in lieu of fees required under section 53-615. The form of such permits and the application therefore [therefor] shall be provided by the state highway commission under such rules and regulations as they may prescribe and shall be designed so that the licensed dealer may fill in the necessary information thereon and such permit will be validated by the dating, inserting of name and address of the prospective purchaser, and affixing thereto the signature of said licensed dealer. The licensed dealer may obtain more than one (1) but not to exceed five (5) demonstration permits with each application.

History: En. Sec. 2, Ch. 36, L. 1965.

Compiler's Notes

Section 53-615, referred to in this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

53-118.3. Operation under truck demonstration permit—period of permit—rental under permit prohibited. Vehicles displaying said permit may be operated either laden or unladen. Each of the said permits shall expire seven (7) days from and after the date of validation by the licensed dealer.

A demonstration permit shall not be issued to the same prospective purchaser for the demonstration of the same vehicle or vehicles for more than one (1) seven (7) day period.

The vehicle operating with the demonstration permit shall not be leased or rented by the licensed dealer or operated for compensation by the licensed dealer whatsoever.

History: En. Sec. 3, Ch. 36, L. 1965.

53-118.4. Violation of truck demonstration provisions. Violation of any provision of this section shall be deemed a misdemeanor and subject to the provision of section 53-623. For the purposes of this section, a licensed dealer shall be considered the owner.

History: En. Sec. 4, Ch. 36, L. 1965.

Compiler's Notes

Section 53-623, referred to in this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

53-118.5. Disposition of truck demonstration fees. Fees collected under this section shall be disposed of in the manner provided in section 53-621 R. C. M., 1947, originally enacted as section 7, chapter 219, Laws of 1951.

History: En. Sec. 5, Ch. 36, L. 1965.

Compiler's Notes

Section 53-621, referred to in this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

53-119. (1759.5) Must have license plates. Except as otherwise provided herein, no person shall operate a motor vehicle upon the public highways of this state without a license and unless such vehicle shall have been properly registered and shall have the proper number plates conspicuously displayed, one (1) on the front and one (1) on the rear of such vehicle, each securely fastened so as to prevent the same from swinging and unobstructed from plain view, except that trailers and semitrailers shall have but one (1) number plate conspicuously displayed on the rear. No person shall display on such vehicle at the same time any number assigned to it under any motor vehicle law, except as in this act otherwise provided. No person shall purchase or display on such vehicle any license plate bearing the number assigned to any county as provided in section 53-106, other than the county of his permanent residence at the time of application for registration. Provided, however, that the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application therefor in any county through which said motor vehicle passes in its regular scheduled route, and the license plate so issued bearing the number assigned to said county may be displayed

on said motor vehicle in any other county of the state. It is further provided that it shall be unlawful to use license plates issued to one (1) vehicle on any other vehicle, trailers or semitrailers unless legally transferred as provided by statute, or repainting old license plates to resemble current license plates and any person violating these provisions shall be deemed guilty of a misdemeanor and shall be subject to the penalty as set out in section 53-132.

History: En. Subd. 6, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 154, L. 1937; amd. Sec. 1, Ch. 73, L. 1941; amd. Sec. 10, Ch. 127, L. 1969.

Amendments

The 1969 amendment substituted "registration" for "and issuance of said license

plates" at the end of the third sentence, deleted a statement of the validity of a current year's license plate used on the transfer of ownership of any used motor vehicle in the first proviso, and, in the last sentence, inserted "unless legally transferred as provided by statute" after "semitrailers."

53-119.1. Special permits for vehicles engaged in a single movement on the highways—fee—limitation—county treasurer to issue. A vehicle, subject to license under Title 53, may be moved unladen upon the highways of this state from a point within the state to a point of destination, the county treasurer at the point of the origin of the movement, shall issue a special permit therefor in lieu of fees required under sections 53-122 and 53-615, upon application presented to him in such form as shall be provided by the registrar of motor vehicles and upon exhibiting to said county treasurer proof of ownership and evidence that the personal property taxes on such vehicle, if any are due thereon, have been paid and upon payment therefor a fee of five dollars (\$5). Such permit shall not be in lieu of fees and permits required under sections 53-630 through 53-638.

Such permit shall be for the transit of the vehicle only, and the vehicle shall not at the time of such transit, be used for the transportation of any persons, except the driver, or property whatsoever for compensation or otherwise, and shall be for one (1) transit only between the points of origin and destination as set forth in the application and shown on the permit.

For the purpose of this section, a mobile home shall be considered unladen, when all items are removed, except the equipment originally installed by the manufacturer; and personal effects of owners.

Definition of a mobile home—house trailer for the purposes of this section. A trailer or semitrailer which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) and is equipped for movement on streets and highways, and exceeds twenty-five (25) feet in length, exclusive of trailer hitch.

History: En. Sec. 1, Ch. 182, L. 1955; amd. Sec. 1, Ch. 126, L. 1965.

Compiler's Notes

Sections 53-615, 53-630, 53-631, and 53-634 through 53-638, referred to in the first paragraph of this section, were repealed by Sec. 12-109, Ch. 197, Laws 1965.

Amendment

The 1965 amendment substituted the first paragraph for a sentence reading, "When any vehicle subject to license is to be moved upon the public highways of this state, from one point to another, the county treasurer may issue a special permit therefor upon application presented to him in such form as shall be approved by

the registrar of motor vehicles and upon payment thereof of a fee of five dollars (\$5.00)"; added "and shown on the permit" at the end of the second paragraph; and added the third and fourth paragraphs.

53-120. (1759.6) Replacing number plates. In the event of loss, mutilation, or destruction of number plates, the owner of the registered motor vehicle may obtain from the registrar of motor vehicles, duplicates thereof upon filing sworn declaration showing such fact and payment of a fee of two dollars (\$2.00). In the event of loss, mutilation, or destruction of Pioneer plates, duplicates may be obtained in the same manner upon payment of a fee of five dollars (\$5.00).

History: En. Sudb. 7, Sec. 1, Ch. 158, L. 1933; amd. Sec. 1, Ch. 47, L. 1955; amd. Sec. 1, Ch. 86, L. 1969.

Amendments

The 1969 amendment added provision for obtaining duplicate Pioneer plates.

53-122. (1760) Registration fees of motor vehicles—fees—disposal of proceeds—fee for half year—dealers' registration and transfer thereof—public owned vehicles exempt from license or registration fees—license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees. Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, house trailers, semitrailers and dealers in motor vehicles or trailers in accordance with this act, as follows:

Dealers in motor vehicles other than motorcycles, a minimum fee of thirty dollars (\$30.00) which shall entitle such dealer to two (2) sets of number plates, and five dollars (\$5.00) additional fee for each additional set of number plates up to six (6) sets, and two dollars (\$2.00) additional fee for each additional set of number plates, as may be applied for by such dealer; provided, that each dealer be required to furnish the registrar of motor vehicles a statement showing the makes of motor vehicles handled by him, and the total number of each make sold by him during the preceding year, and that he not be issued a license unless he so conforms;

Dealers in motorcycles, trailers including house trailers, fifteen dollars (\$15.00);

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars (\$5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks ten dollars (\$10.00);

Electrically driven passenger vehicles, ten dollars (\$10.00);

All motorcycles, two dollars (\$2.00);

Tractors and/or trucks, ten dollars (\$10.00);

Buses shall be classed as motor trucks and licensed accordingly;

Trailers and semitrailers less than two thousand five hundred (2,500) pounds maximum gross loaded weight and house trailers of all weights, two dollars (\$2.00);

Trailers and semitrailers over two thousand five hundred (2,500) up to six thousand (6,000) pounds maximum gross loaded weight, except house trailers, five dollars (\$5.00);

Trailers and semitrailers over six thousand (6,000) pounds maximum gross loaded weight, ten dollars (\$10.00);

Trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of fifteen dollars (\$15.00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semitrailers, when not equipped with pneumatic tires.

Bicycles with motor attachment, one dollar (\$1.00);

Tractors, as specified in this section, shall mean any motor vehicle, except passenger cars used for towing a trailer or semitrailer.

If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half ($\frac{1}{2}$) of the regular fee above given.

A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the location of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of two dollars (\$2.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers or tractors owned or controlled by the United States of America or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.

All fees, other than license fees, unless otherwise specifically provided, shall hereafter be deposited in, and paid into, the earmarked revenue fund and shall be used to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, including the manufacturer and delivery of license plates. Any reference in this code to the motor vehicle recording fund or the motor vehicle administration fund shall be taken to mean the motor vehicle recording account in the earmarked revenue fund.

History: En. Sec. 6, Ch. 75, L. 1917; amd. Sec. 2, Ch. 207, L. 1919; amd. Sec. 1, Ch. 199, L. 1921; re-en. Sec. 1760, R. C. M. 1921; amd. Sec. 1, Ch. 107, L. 1923; amd. Sec. 1, Ch. 88, L. 1927; amd. Sec. 1, Ch. 182, L. 1929; amd. Sec. 1, Ch. 103, L. 1933; amd. Sec. 1, Ch. 38, Ex. L. 1933; amd. Sec. 1, Ch. 138, L. 1937; amd. Sec. 1, Ch. 125, L. 1939; amd. Sec. 2, Ch. 154, L. 1943; amd. Sec. 2, Ch. 200, L. 1945; amd. Sec. 1, Ch. 201, L. 1945; amd. Sec. 1, Ch. 221, L. 1951; amd. Sec. 1, Ch. 215, L. 1953; amd. Sec. 1, Ch. 41, L. 1955; amd. Sec. 228, Ch. 147, L. 1963; amd. Sec. 1, Ch. 178, L. 1963; amd. Sec. 30, Ch. 121, L. 1965; amd. Sec. 12-105, Ch. 197, L. 1965.

Compiler's Notes

This section was amended twice in 1965, once by Ch. 121 and once by Ch. 197. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund and shall be used to pay" in what is now the last paragraph for "the motor vehicle recording fund of said registrar (sometimes called the motor vehicle administrative fund) out of which shall be paid"; added the second sentence to the same paragraph; deleted a former next to last paragraph reading, "There shall be immediately transferred from the motor vehicle fund of the registrar of motor vehicles to the said motor vehicle recording fund all moneys now in said motor vehicle fund which were collected by the registrar of motor vehicles as fees other than license fees"; and substituted "motor vehicle recording account" for "motor vehicle recording fund" in the paragraph later deleted by Ch. 121, Laws 1965.

Chapter 178, Laws 1963, amended former paragraph (c), for previous text of which see parent volume, to read, "In every county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above, the net license fee derived from the registration of motor vehicles shall be by the registrar of motor vehicles transmitted to, and paid over to the county treasurer of each such county and shall be allocated and divided by the county treasurer as hereinafter provided. The motor vehicle license fund in each such county shall be divided between accounts designated as 'city road fund' and 'county road fund' in a prorata manner based upon the total number of miles of

all public streets and highways situated within the limits of incorporated cities and towns within each county as compared with the total number of miles of public streets and highways situated within the county, but outside the corporate limits of any incorporated cities and towns"; inserted immediately after former paragraph (c) two new paragraphs reading, "The license fees held in the city road fund, as hereinabove provided shall be at the end of each thirty (30) day period beginning March 1, 1964, be paid by the county treasurer to the treasurer of each incorporated city or town within the county in a pro rata manner based upon the number of miles of all public streets and highways situated within such city or town as compared to the total number of miles of all public streets and highways within the limits of all incorporated cities and towns within the county. The city or town treasurer shall hold said moneys in a separate fund designated as the 'city road fund' which shall be used by the city or town council only for the construction and repair of streets and highways within the corporate limits of such incorporated city or town" and "The net license fees derived from the registration of vehicles shall be used by said county for the construction, repair and maintenance of all public highways, except state and federal highways, within the boundaries of said county"; and added a final paragraph reading, "The board of county commissioners of each county which does not have within its borders a city and area coming within the provisions of subsections (a) and (b) above shall prior to March 1 of each year, beginning with the year 1964, determine the number of miles of public streets and highways situated in each incorporated city and town in the county, and the number of miles of public streets and highways within the county, but outside the corporate limits of the incorporated cities and towns, in order that the motor vehicle license and registration fees can be divided between the 'county road fund' and each 'city road fund' in the pro rata manner as provided in this act. The board of county commissioners shall at the same time also compute the percentage of said motor vehicle license and registration fees to be paid by the county treasurer to the treasurer of each incorporated city and town and also the percentage to be deposited in the county road fund."

Chapter 121, Laws 1965, adopted both 1963 amendments; increased the fee for change of ownership by registered dealer from \$1.00 to \$2.00; substituted "unless otherwise specifically provided" for "mentioned and described in sections 53-110 and 53-112, and in section 53-135" near

the beginning of what is now the final paragraph; and deleted a next to last paragraph reading, "Whenever, in the judgment of the state board of examiners, there shall be in said motor vehicle recording account more moneys than are reasonably required or needed to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, such board shall distribute such unneeded surplus or excess to the fifty-six (56) counties of the state in a pro rata manner based upon the total number of motor vehicles registered in each county."

Chapter 197, Laws 1965, effective December 31, 1966, deleted several para-

graphs relating to the county motor vehicle license fund, for text of which see pages 538 and 539 in parent volume and above note relating to Chapter 178, Laws 1963; and deleted the three paragraphs inserted and added by Chapter 178, Laws 1963.

Cross-Reference

Property tax stickers required on house trailers, secs. 84-6601 to 84-6605.

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-129. (1760.7) Foreign vehicles used in gainful occupation—reciprocity board may make reciprocal agreements to exempt. Before any foreign licensed motor vehicle shall be operated on the highways of this state for hire, compensation or profit, or before the owner and/or user thereof uses the vehicle if such owner and/or user is engaged in gainful occupation or business enterprise, in the state of Montana, including highway work, the owner of such vehicle shall make application to a county treasurer for registration, upon an application form furnished by the registrar of motor vehicles. Upon satisfactory evidence of ownership submitted to such county treasurer, and the payment of property taxes as is required by sections 84-6008 or 84-406, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle. The treasurer shall thereupon issue to the applicant a copy of the application entitled "Owner's Certificate of Registration Receipt" and forward a duplicate copy of certificate of registration to the registrar of motor vehicles. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon such vehicle, when operated or driven upon roads and highways of this state, during the period of the life of such license. The registration receipt shall not constitute evidence of ownership, but shall only be used for registration purposes. No Montana certificate of title shall be issued for this type of registration. This paragraph shall not be applicable to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana.

History: En. Sec. 7, Ch. 121, L. 1929; amd. Sec. 7, Ch. 126, L. 1933; amd. Sec. 1, Ch. 93, L. 1939; amd. Sec. 1, Ch. 296, L. 1947; amd. Sec. 3, Ch. 195, L. 1953; amd. Sec. 1, Ch. 143, L. 1955; amd. Sec. 26, Ch. 206, L. 1963; amd. Sec. 2, Ch. 290, L. 1967.

Amendments

The 1963 amendment deleted former subsections (2) and (3), for text of which see parent volume; and substituted "under the provisions of this act" for "as hereinafter set forth" after "entered into under" at the end of this section.

The 1967 amendment inserted "and/or user" after "owner" and substituted "if such owner and/or user is" for "while" after "uses the vehicle" in the first sentence; inserted "and the payment of property taxes as is required by sections 84-6008 or 84-406" after "county treasurer" in the second sentence; deleted "which is a part of an interstate fleet registered and licensed under the provisions of section 53-114, nor to any vehicle" before "covered by" and substituted "the laws of Montana" for "this act" after "the provisions of" in the last sentence.

53-133. (1763) Definitions. The words and phrases used in this act shall be construed as follows, unless the context may otherwise require:

a to f. * * * [Same as parent volume.]

g. The term "dealer" shall mean and include any person, firm, association, or corporation engaged in whole or in part in the business of buying, selling, exchanging, or acting as a broker of either new or used motor vehicles, or both, and who is qualified for issuance of a dealer's license under section 53-118, and no person, firm, association or corporation shall be issued a dealer's license by the registrar of motor vehicles unless they qualify as a dealer defined herein. The term "dealer" does not include the following: (1) Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction; or (2) employees of such persons when engaged in the specific performance of their duties as such employees; or (3) public officers while performing or in the operation of their duties. A dealer dealing in used cars only shall deliver to the buyer on completion of sale a transferable title, and shall purchase a Montana store license.

h to j. * * * [Same as parent volume.]

k. The term "manufacturer" shall include any person, firm, corporation or association engaged in the manufacture of any motor vehicles, trailers, or semitrailers as a regular business. Dealer shall deliver, under oath, a notarized certificate with any used motor vehicle, stating the full name and last known address of the previous owner of said motor vehicle, and state where the motor vehicle was last registered.

History: En. Sec. 12, Ch. 75, L. 1917; amd. Sec. 3, Ch. 207, L. 1919; re-en. Sec. 1763, R. C. M. 1921; amd. Sec. 4, Ch. 88, L. 1943; amd. Sec. 1, Ch. 139, L. 1945; amd. Sec. 1, Ch. 199, L. 1947; amd. Sec. 4, Ch. 256, L. 1965.

cars"; inserted the second sentence in paragraph g; inserted "A dealer dealing in used cars only" at the beginning of the third sentence of paragraph g; and added the last sentence to paragraph k.

Amendment

The 1965 amendment divided the language in former paragraph g into the present first and third sentences of paragraph g; inserted "association" after "firm" in two places in the first sentence of paragraph g; substituted "exchanging, or acting as a broker of" for "repairing, and reconditioning" after "business of buying, selling" in the first sentence of paragraph g; substituted "is qualified for issuance of a dealer's license under section 53-118" for "maintains a place of business with adequate facilities and equipment for the servicing, repair, maintenance, and reconditioning of new or used motor vehicles and also adequate display facilities for at least one motor vehicle" in the first sentence of paragraph g; deleted from the end of the present first sentence of paragraph g a proviso reading, "provided, however, that a used car dealer only shall have a building as an established place of business and need no facilities for repair, maintenance and reconditioning of used

Repealing Clauses

Section 5 of Ch. 256, Laws 1965 read "Section 53-138, R. C. M. 1947, is repealed."

Section 7 of Ch. 256, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 6 of Ch. 256, Laws 1965 read "If any clause, sentence, paragraph or part of this act shall be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, paragraph or part directly adjudged to be invalid or inoperative."

References

Safeco Ins. Co. of America v. Northwestern Mutual Ins. Co., 142 M 155, 382 P 2d 174.

53-136. (1763.4) Alteration or forgery of certificate of title or assignment thereof and penalty therefor. Any person who shall alter or forge or cause to be altered or forged, any motor vehicle certificate of title or any assignment thereof, or who shall hold or use any such certificate or assignment knowing the same to have been altered or forged, shall be deemed guilty of a felony, upon which conviction thereof shall be liable to pay a fine of not more than five thousand dollars (\$5,000) or to imprisonment in any penal institution within the state for a period of not more than ten (10) years, or both, in the discretion of the court.

History: En. Sec. 12, Ch. 113, L. 1925; amd. Sec. 1, Ch. 334, L. 1969.

Amendments

The 1969 amendment inserted "motor

vehicle" before "certificate of title" and deleted "issued by the registrar of motor vehicles pursuant to the provisions of this section" after "certificate of title."

53-138. (1763.6) Repealed.

Repeal

This section (Sec. 14, Ch. 113, L. 1925; Sec. 1, Ch. 221, L. 1947), relating to the

licensing of used car dealers, was repealed by Sec. 5, Ch. 256, Laws 1965.

53-139. (1763.7) Penalty for sale of vehicle with engine number altered or changed—application for special number. (1) Any person or persons, firm or corporation, who, thirty days after the taking effect of this section, shall sell or offer for sale in this state a vehicle, the original engine number of which has been destroyed, removed, altered, covered or defaced, with the exception of electrically propelled vehicles shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than two hundred dollars, nor more than five hundred dollars, and by imprisonment in the county jail for a term of not less than thirty days nor more than one hundred and eighty days, and upon a second or subsequent conviction under this section, the punishment shall be imprisonment in the state prison for a term of not less than one year nor more than five years: Provided, however, that any person or persons, firm or corporation, being the owner or custodian of or having possession of a vehicle at the time of the taking effect of this article, the original engine number of which has been previously destroyed, removed, altered or defaced, shall before the expiration of thirty days after the taking effect of this article apply to the registrar of motor vehicles on a blank to be prepared and furnished by the registrar of motor vehicles upon request, for permission to make or stamp, or cause to be made or stamped on the engine of such vehicle, a special engine number.

(2) * * * [Same as parent volume.]

(3) Upon receipt of such application, together with a fee of two dollars (\$2.00), the registrar of motor vehicles shall issue to said applicant written permission to make or stamp on the engine of such vehicle a special engine number to be designated by the registrar of motor vehicles, and when such special engine number so designated has been stamped or otherwise placed on the engine of such motor vehicle it shall become and thereafter be the lawful engine number of such vehicle, for the purpose of

identification and registration and for all other purposes under the provisions of this chapter, and the owner thereof may sell or transfer the same under said special engine number so designated by the registrar of motor vehicles; and any person or persons who shall destroy, remove, cover, alter or deface any special engine number so designated by the registrar of motor vehicles shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the state prison for a term of not less than two years nor more than ten years.

(4) In designating special engine numbers for motor vehicles under the provisions of this chapter the registrar of motor vehicles shall designate and number the same consecutively, beginning with the number (1), preceded by the letters S. N. and followed by the letters for each and every make of motor vehicle for which a special application engine number shall be made, and in the order of the filing of application therefor: Provided, that from and after the taking effect of this section, the registrar of motor vehicles shall not register any vehicle without an engine number or issue a license for the operation of the same except as specifically provided for herein; and further, before issuing said license the registrar of motor vehicles shall require of the applicant a statement that the special number assigned to be placed on the particular vehicle in question has been put on in a workmanlike manner, and this statement shall be certified to by the sheriff, chief of police, or other convenient peace officer, that he has inspected said vehicle and found said number to be on said motor vehicle as required by the registrar of motor vehicles. Nothing herein shall be construed to prevent any manufacturer or importer, or their agents other than dealers, from doing his own numbering on motor vehicles or parts removed or changed and replacing the numbered parts.

History: En. Sec. 15, Ch. 113, L. 1925; amd. Sec. 31, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified near the beginning of subsection (3) from \$1.00 to \$2.00; and made minor changes in subsections (1) and (4).

53-139.1. Penalty for altering identification number. A person who willfully removes or falsifies an identification number of a motor vehicle or engine for a motor vehicle is guilty of a misdemeanor.

History: En. Sec. 1, Ch. 256, L. 1969.

Title of Act

An act to make unlawful acts relating to altering the identification numbers of motor vehicles.

53-145. Expiration of registration on transfer of ownership of vehicle—duty to remove plates. Upon the transfer of ownership of a motor vehicle, the registration of the motor vehicle shall expire and it shall be the duty of the transferor immediately to remove the license plates from the vehicle.

History: En. Sec. 1, Ch. 127, L. 1969.

Title of Act

An act pertaining to the registration of motor vehicles; requiring removal of li-

cense plates from motor vehicles upon transfer of ownership, authorizing transferor to transfer license plates from original motor vehicle to another motor vehicle acquired during current registration

year upon proper application and payment of fees and taxes, if any; requiring new application and registration for all motor vehicles transferred within ten (10) days; and amending sections 32-3203, 53-106, 53-106.6, 53-107, 53-108, 53-115 and 53-119, R. C. M. 1947.

53-146. Transfer of license plates to another motor vehicle. Should the transferor make application for the registration of another motor vehicle at any time during the remainder of the current registration year, he may file an application, in the office of the county treasurer where the motor vehicle is taxable, upon a form to be prepared and furnished by the registrar of motor vehicles, accompanied by the original certificate of registration, for the transfer of the license plates. The transfer of the license plates from the motor vehicle for which originally issued to a motor vehicle acquired by the same person in whose name the original license plates were issued shall be made within ten (10) days from date of acquiring the vehicle. The use of the license plates shall not be legalized until proper transfer of license plates has been made.

History: En. Sec. 2, Ch. 127, L. 1969.

53-147. New registration required for transferred vehicle. The new owner of the transferred motor vehicle shall, before operating or driving the same upon the public highways of this state, make application and pay the registration fees and taxes as provided by section 53-114, as if the same was being registered for the first time in that registration year.

History: En. Sec. 3, Ch. 127, L. 1969.

CHAPTER 2—USE OF HIGHWAYS BY NONRESIDENT CAR OWNERS— ACCIDENTS—SERVICE OF PROCESS

53-202. Secretary of state attorney for service of process.

References

Olsen v. Dairyland Mut. Ins. Co., 248
F Supp 639.

53-203. Operation of motor vehicle as appointment, etc.

References

Olsen v. Dairyland Mut. Ins. Co., 248
F Supp 639.

53-204. Repealed.

Repeal

This section (Sec. 4, Ch. 10, L. 1937; Sec. 10, Ch. 117, L. 1961), relating to service of process on nonresident motorist, was repealed by Sec. 2, Ch. 189, Laws 1963.

CHAPTER 4—ELIMINATION OF RECKLESS DRIVING—RESPONSIBILITY OF MOTOR VEHICLE OWNERS AND OPERATORS

- | | |
|-----------------|---|
| Section 53-418. | Definitions. |
| 53-420. | Supervisor to furnish operating record. |
| 53-422. | Determination of security required—suspension of license and registration—exceptions—liability insurance. |
| 53-432. | Satisfaction of judgments. |
| 53-438. | Motor vehicle liability policy defined. |

53-418. Definitions. The following words and phrases, when used in this act shall, for the purposes of this act, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

1 to 11. * * * [Same as parent volume.]

12. "Proof of financial responsibility"—Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and in the amount of five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.

13 and 14. * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 204, L. 1951; amd. Sec. 1, Ch. 30, L. 1967.

Amendments

The 1967 amendment amended subsection 12 to increase the minimum requirements of financial responsibility from \$5,000 to \$10,000 for bodily injury to or death of one person in any one accident, from \$10,000 to \$20,000 for bodily injury to or death of two or more persons in any one accident, and from \$1,000 to \$5,000 for injury to or destruction of property of others in any one accident.

Intent of Legislature

General legislative intent in enacting financial responsibility provisions of the Motor Vehicle Safety Responsibility Act was: (1) to provide for voluntary and not compulsory automobile liability insurance for motorist who has not become involved in automobile accident, (2) to require compulsory proof of ability to respond in damages resulting from automobile accident after motorist becomes involved in

such accident, and (3) to require compulsory proof of financial responsibility for future automobile accidents, from motorist (a) convicted of certain driving offenses, or (b) who has outstanding unsatisfied judgment against him as result of past automobile accident; motorist who voluntarily carried ordinary automobile liability policy at time he became involved in accident was exempted from requirements of proof of ability to respond in damages whereas motorist who has neither been convicted nor forfeited bail for one of driving offenses referred to in act nor who has outstanding unsatisfied judgment against him as result of previous automobile accident is not required to furnish proof of future financial responsibility at all. *Boldt v. State Farm Mut. Automobile Ins. Co.*, 151 M 337, 443 P 2d 33.

References

Schwentner v. White, 199 F Supp 710, 711.

53-420. Supervisor to furnish operating record. The supervisor shall upon request furnish any person a certified abstract of the operating record of any person subject to the provisions of this act, which abstract shall also fully designate the motor vehicles, if any registered in the name of such person, and, if there shall be no record of any conviction of such person of violating any law relating to the operation of a motor vehicle or of any injury or damage caused by such person, the supervisor shall so certify. A fee of one dollar (\$1.00) shall be paid for said certified abstract.

History: En. Sec. 3, Ch. 204, L. 1951; amd. Sec. 17, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the fee specified in the final sentence from 50¢ to \$1.00.

53-422. Determination of security required—suspension of license and registration—exceptions—liability insurance. (a) and (b). * * * [Same as parent volume.]

(c) This section shall not apply under the conditions stated in section 53-423, nor;

1. to such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

2. to such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him;

3. to such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the supervisor, covered by any other form of liability insurance policy or bond; nor

4. to any person qualifying as a self-insurer under section 53-451, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this state, except that if such motor vehicle was not registered in this state, or was a motor vehicle which was registered elsewhere than in this state at the effective date of the policy or bond, or the most recent renewal thereof, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this state shall execute a power of attorney authorizing the supervisor to accept service on its behalf of notice or process in any action upon such policy or bond arising out of such accident; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and costs, of not less than ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.

History: En. Sec. 5, Ch. 204, L. 1951; amd. Sec. 1, Ch. 83, L. 1959; amd. Sec. 2, Ch. 30, L. 1967.

Amendments

The 1967 amendment increased the minimum proof of financial responsibility from \$5,000 because of bodily injury to or death of one person in any one accident

to \$10,000; increased from \$10,000 to \$20,000 the amount required for bodily injury to or death of two or more persons in any one accident; and increased from \$1,000 to \$5,000 the amount required for injury to or destruction of property of others in any one accident, all in the last paragraph.

53-432. Satisfaction of judgments. Judgments herein referred to shall, for the purposes of this act only, be deemed satisfied:

1. when ten thousand dollars (\$10,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

2. when, subject to such limit of ten thousand dollars (\$10,000) because of bodily injury to or death of one person, the sum of twenty thousand dollars (\$20,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury or death of two or more persons as the result of any one accident; or

3. when five thousand dollars (\$5,000) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

History: En. Sec. 15, Ch. 204, L. 1951; amd. Sec. 3, Ch. 30, L. 1967.

Amendments

The 1967 amendment doubled the amounts required by paragraphs 1 and 2; and increased the amount required by paragraph 3 from \$1,000 to \$5,000.

53-438. Motor vehicle liability policy defined. (a). * * * [Same as parent volume.]

(b) Such owner's policy of liability insurance: 1. shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted; and 2. shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada, subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: ten thousand dollars (\$10,000) because of bodily injury to or death of one person in any one accident and subject to said limit for one person, twenty thousand dollars (\$20,000) because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars (\$5,000) because of injury to or destruction of property of others in any one accident.

(c) to (k). * * * [Same as parent volume.]

History: En. Sec. 21, Ch. 204, L. 1951; amd. Sec. 4, Ch. 30, L. 1967.

to or destruction of property of others in any accident, all in subsection (b).

Amendments

The 1967 amendment increased the minimum proof of financial responsibility from \$5,000 to \$10,000 because of bodily injury to or death of one person in any one accident, from \$10,000 to \$20,000 because of bodily injury to or death of two or more persons in any one accident, and from \$1,000 to \$5,000 because of injury

Defenses Available to Insurer

Insurance company being sued by injured party for amount of judgment previously secured against insured motorist was entitled to defend on ground that accident was not reported to it until year later, in breach of the policy provisions requiring prompt notice, despite contention that policy was subject to that portion

of act eliminating policy defenses. *Boldt v. State Farm Mut. Automobile Ins. Co.*, 151 M 337, 443 P 2d 33.

Garage Business Exclusion

Garage business exclusion clause of policy was not violative of public policy as expressed in statute in absence of show-

ing that policy was issued to show proof of financial responsibility. *Northern Assurance Co. of America v. Truck Ins. Exchange*, 151 M 132, 439 P 2d 760.

References

Empire Fire & Marine Ins. Co. v. Goodman, 147 M 396, 412 P 2d 569.

CHAPTER 5—STATE-OWNED MOTOR VEHICLES—CUSTODY —REGULATION OF USE—LETTERING

- Section 53-511. State motor vehicle pool created—state highway commission to operate and maintain.
53-512. Vehicles to be stored, maintained and serviced by commission—costs.
53-513. Rules and regulations.

53-511. State motor vehicle pool created—state highway commission to operate and maintain. There is hereby created a state motor vehicle pool to be operated and maintained by the Montana state highway commission.

History: En. Sec. 1, Ch. 181, L. 1969.

Title of Act

An act to establish a state motor vehicle pool and for the storage and maintenance of state-owned vehicles.

53-512. Vehicles to be stored, maintained and serviced by commission—costs. All motor vehicles owned or leased by the state of Montana or its boards, commissions or agencies operated out of any areas or locations where five (5) or more state vehicles or three (3) or more state agencies are located, shall be stored, maintained and serviced by the Montana state highway commission. All actual costs for maintenance, service and storage to these state vehicles shall be paid to the Montana state highway commission by the individual state agencies involved.

History: En. Sec. 2, Ch. 181, L. 1969.

53-513. Rules and regulations. Any and all rules and regulations promulgated for the operation and maintenance of a state motor vehicle pool shall be the same or as near feasible to rules and regulations followed by the Montana state highway commission in the use of their own motor vehicles.

History: En. Sec. 3, Ch. 181, L. 1969.

Effective Date

Section 4 of Ch. 181, Laws 1969 read "This bill to become effective July 1, 1969."

CHAPTER 6—ADDITIONAL FEES OR TAXES ON MOTOR VEHICLES

- Section 53-626. Exemptions from act.
53-638.1. Exemptions of vehicles not capable of operation on highways.
53-642. "Special mobile equipment" defined.

53-615 to 53-619. Repealed.

Repeal

These sections (Secs. 1 to 5, Ch. 219, L. 1951; Sec. 1, Ch. 139, L. 1953; Sec. 1, Ch. 89, L. 1955; Sec. 1, Ch. 175, L. 1955; Sec. 1, Ch. 177, L. 1955; Sec. 1, Ch. 251, L. 1955; Sec. 1, Ch. 258, L. 1955; Sec. 1, Ch. 103, L. 1959; Sec. 1, Ch. 211, L. 1959; Sec. 1, Ch. 193, L. 1961; Sec. 1, Ch. 150,

L. 1963; Sec. 1, Ch. 195, L. 1965; Sec. 1, Ch. 224, L. 1965), relating to additional fees and taxes payable for vehicles, were repealed by Sec. 12-109, Ch. 197, Laws 1965. For new law, see secs. 32-3201, 32-3301 to 32-3310, 32-3312, 32-3314, and 32-3315.

53-621 to 53-623. Repealed.

Repeal

These sections (Secs. 7 to 9, Ch. 219, L. 1951; Sec. 1, Ch. 226, L. 1959), relating to

fees and penalties for trucks and trailers, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-625. Repealed.

Repeal

This section (Sec. 11, Ch. 219, L. 1951; Sec. 1, Ch. 231, L. 1957), relating to re-

ciprocity and fleet registration, was repealed by Sec. 27, Ch. 206, Laws 1963.

53-626. Exemptions from act. Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within fifteen (15) miles from such limits shall be exempt from the provisions of this act; provided that motor vehicles brought or driven into Montana by any nonresident migratory bona fide agricultural worker temporarily employed in agricultural work in this state where said motor vehicles are used exclusively for transportation of agricultural workers shall likewise be exempt from the provisions of this act; and further providing all vehicles lawfully displaying a licensed dealers plate as provided in section 53-122, Revised Codes of Montana, 1947, shall be exempt from the provisions of this act when moving to or from a dealers place of business when unladen or laden with dealers property only.

History: En. Sec. 12, Ch. 219, L. 1951; amd. Sec. 1, Ch. 262, L. 1967.

Amendments

The 1967 amendment added the second proviso at the end of this section.

53-628 to 53-631. Repealed.

Repeal

These sections (Secs. 14, 15, Ch. 219, L. 1951; Secs. 1, 2, Ch. 133, L. 1953; Sec. 1, Ch. 104, L. 1957), relating to markings of

trucks and buses, municipal taxes, and to drive-away and tow-away transporters, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-634 to 53-638. Repealed.

Repeal

These sections (Secs. 5 to 9, Ch. 133, L. 1953), relating to drive-away and tow-

away transporters, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

53-638.1. Exemptions of vehicles not capable of operation on highways. Track-type tractors, other track mounted machinery and equip-

ment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and which must be transported by some type of hauling unit, shall not be subject to any of the terms and provisions of Title 53, R.C.M. 1947.

History: En. Sec. 3, Ch. 150, L. 1963. vided the act should be in effect from and after its passage and approval. Approved March 5, 1963.

Effective Date

Section 4 of Ch. 150, Laws 1963 pro-

53-639. Repealed.

Repeal repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

This section (Sec. 1, Ch. 183, L. 1955), relating to special mobile equipment, was

53-642. "Special mobile equipment" defined. "Special mobile equipment" means every vehicle which is not designed and used primarily for the transportation of persons or property on a public highway and which is operated or moved over the highway from construction project to construction project, and not removed from the confines and haul roads thereof, except for movement from construction project to storage yard, from storage yard to construction project, or from storage yard or construction project to point of repair or maintenance and return. Special mobile equipment includes, but is not limited to portable air compressors, air drills, asphalt spreaders, gravel crushing equipment and hot plant equipment, buckets, belt and front-end loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, earth moving scrapers and carry-alls, lighting, generating and power plants, welders, pumps, power shovels and draglines, cranes, crane mounted heel-boom log loaders, fork-lift trucks, lumber carriers, bunk-houses, tool houses, shop cars, oil distributors, scales and scale houses, and conveyors. It also includes self-propelled tractor-drawn earth moving equipment, dump trucks and tractor-dump trailer combinations which, because of excess width, height, length, or unladen weight, cannot be moved over a public highway without a permit as provided in section 32-1127, R.C.M. 1947, and which are operated unladen except within the boundaries of the project limits, as defined by the contract, and adjacent haul roads. However, the term "special mobile equipment" shall not include a vehicle such as a truck, truck-tractor, trailer, semitrailer, house trailer, or house car, designed for the transportation of persons or property.

History: En. Sec. 4, Ch. 183, L. 1955; **Amendment**

amd. Sec. 2, Ch. 150, L. 1963. The 1963 amendment substantially rewrote this section. For previous version, see parent volume.

53-643. Repealed.

Repeal mobile equipment, was repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

This section (Sec. 5, Ch. 183, L. 1955), relating to identification plates for special

CHAPTER 7—RECIPROCITY AND PROPORTIONAL REGISTRATION

- Section 53-701. Declaration of policy.
 53-702. Definitions.
 53-703. Montana motor vehicle reciprocity board creation.
 53-704. Authority of Montana motor vehicle reciprocity board.
 53-705. Authority for reciprocity agreements, provisions, reciprocity standards.
 53-706. Base state registration reciprocity.
 53-707. Proportional registration of fleet vehicles.
 53-708. Declarations of extent of reciprocity.
 53-709. Extension of reciprocal privileges to lessees authorized.
 53-710. Automatic reciprocity.
 53-711. Proportional registration not exclusive.
 53-712. Proportional registration of fleet vehicles, application, fee-formula and payment.
 53-713. Registration and identification of proportionally registered vehicles, effect of such registration.
 53-714. Proportional registration cannot be in a single jurisdiction.
 53-715. Registration of additional fleet vehicles.
 53-716. Withdrawal of fleet vehicles, credits and accounting.
 53-717. New fleet—estimated mileage.
 53-718. Fleet registration may be denied.
 53-719. Preservation of proportional registration records.
 53-720. Relation to other state laws.
 53-721. Suspension of reciprocity benefits.
 53-722. Agreements to be written, filed and available for distribution.
 53-723. Reciprocity agreements in effect at time of act.
 53-724. Act part of and supplement to motor vehicle registration law.

53-701. Declaration of policy. It is the policy of this state to promote and encourage the fullest possible use of its highway system by authorizing the making and execution of motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries with respect to vehicles registered in this and such other states, provinces, territories and countries thus contributing to the economic and social development and growth of this state.

History: En. Sec. 1, Ch. 206, L. 1963.

Title of Act

An act relating to motor vehicles; creating, amending and repealing laws on motor vehicle reciprocal or proportional registration agreements, arrangements and declarations with other states, provinces, territories and countries, so as to conform substantially with the model reciprocity and proration draft proposed by the national committee on uniform traffic laws

and ordinances; providing a declaration of policy, definitions, creation of Montana motor vehicle reciprocity board, and authority of said board; and providing other related sections for carrying out the policy, construction and administration of this act; providing a severability clause; amending section 53-129, R.C.M., 1947, as amended; repealing section 53-625, R.C.M., 1947, as amended; providing an effective date.

53-702. Definitions. As used in this act: (1) "Commercial vehicle" means any vehicle which is operated in more than one state and used for the transportation of persons for hire, compensation or profit, or designed or used primarily for the transportation of property.

(2) "Jurisdiction" means and includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country and a state or province of a foreign country.

(3) "Owner" means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional

sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee, or in the event a vehicle is subject to a lease, contract or other legal arrangement vesting right of possession or control, for security or otherwise, or in the event a mortgagor of a vehicle is entitled to possession, then the owner shall be deemed to be such person in whom is vested right of possession or control.

(4) "Legal residence," as used in this act only, means a jurisdiction where the person lives or conducts his business. Such residence need not be coupled with the intent to live or conduct the business there on a permanent basis. The use of the word "residence" in this act shall be confined to the definition given, and shall not be confused with the word "domicile." This definition of "residence" further recognizes that a person may have several residences, but only one domicile.

(5) (a) "Properly registered," as applied to place of registration means:

(i) The jurisdiction where the person registering the vehicle has his legal residence, or

(ii) In the case of a commercial vehicle, the jurisdiction in which it is registered if the commercial enterprise in which such vehicle is used has a place of business therein and, if the vehicle is most frequently dispatched, garaged, serviced, maintained, operated or otherwise controlled in or from such place of business and, the vehicle has been assigned to such place of business, or

(iii) In the case of a commercial vehicle, the jurisdiction where, because of an agreement or arrangement between two or more jurisdictions, or pursuant to a declaration, the vehicle has been registered as required by said jurisdiction.

(b) In case of doubt or dispute as to the proper place of registration of a vehicle, the Montana motor vehicle reciprocity board shall make the final determination, but in making such determination, the Montana motor vehicle reciprocity board may confer with departments of the other jurisdictions affected.

(6) "Fleet" means two (2) or more commercial vehicles.

(7) "Person," for purposes of this act, means every natural person, firm, copartnership, association, or corporation.

(8) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(9) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(10) "Preceding year" means a period of twelve (12) consecutive months fixed by the Montana motor vehicle reciprocity board which period shall be within sixteen (16) months immediately preceding the commencement of the registration or license year for which proportional

registration is sought; and the Montana motor vehicle reciprocity board in fixing such period shall make it conform to the terms, conditions and requirements of any applicable agreement or arrangements for the proportional registration of vehicles.

History: En. Sec. 2, Ch. 206, L. 1963.

53-703. Montana motor vehicle reciprocity board creation. (1) There is hereby created for the purpose of administration of this act, the Montana motor vehicle reciprocity board, which shall consist of six (6) members to be appointed by the governor. One of said members shall be the registrar of motor vehicles; one shall be a member of the Montana highway patrol; one shall be a member of the Montana state highway commission; one shall be a member of the state board of equalization; one shall be an attorney from the legal staff of the Montana state highway commission; and one shall be the gross vehicle weight supervisor. In lieu of any above-named member, the governor may instead appoint a qualified representative from the commission, board or office designated. The members of the board shall meet in Helena, Montana, within two weeks after the effective date of this act. At the said first meeting and annually in December thereafter, the board shall elect a secretary who shall be a member of said board, and the board shall elect a chairman and a vice-chairman from its own membership who shall hold office for one (1) year. Election as chairman and vice-chairman shall not interfere with the member's right to vote on all matters before the board. The board shall meet at such other times as it deems advisable, but at least once every two (2) calendar months, and shall from time to time adopt rules and regulations for the administration of this act as may be deemed necessary.

(2) The board shall act collectively in harmony with recorded resolutions or motions adopted by the majority of the board at regular or special meetings, notice of which meetings shall be given to all members pursuant to the rules of said board. Four (4) members shall constitute a quorum at any meeting; but no resolution, motion, or other decision of the board shall be adopted or passed without the favorable vote of at least four (4) members.

History: En. Sec. 3, Ch. 206, L. 1963.

53-704. Authority of Montana motor vehicle reciprocity board. The Montana motor vehicle reciprocity board shall have the authority to execute or make arrangements, agreements or declarations to carry out the provisions of this act.

History: En. Sec. 4, Ch. 206, L. 1963.

53-705. Authority for reciprocity agreements, provisions, reciprocity standards. The Montana motor vehicle reciprocity board may enter into an agreement or arrangement with the duly authorized representatives of other jurisdictions, granting to vehicles or to owners of vehicles which are properly registered or licensed in such jurisdictions, and for which evidence of compliance is supplied, benefits, privileges and exemptions

from payment, wholly or partially, of any taxes, fees, or other charges imposed upon such vehicles or owners with respect to the operation or ownership of such vehicles under the laws of this state. Such an agreement or arrangement shall provide that vehicles properly registered or licensed in this state, when operated upon highways of such other jurisdiction, shall receive exemptions, benefits and privileges of a similar kind or to a similar degree as are extended to vehicles properly registered or licensed in such jurisdiction when operated in this state. Each such agreement or arrangement shall, in the judgment of the Montana motor vehicle reciprocity board, be in the best interest of the state and the citizens thereof and shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 5, Ch. 206, L. 1963.

53-706. Base state registration reciprocity. An agreement or arrangement entered into, or a declaration issued under the authority of this act may contain provisions authorizing the registration or licensing in another jurisdiction of vehicles located in or operated from a base in such other jurisdiction which vehicles otherwise would be required to be registered or licensed in this state; and in such event the exemptions, benefits and privileges extended by such agreement, arrangement or declaration shall apply to such vehicles, when properly licensed or registered in such base jurisdiction.

History: En. Sec. 6, Ch. 206, L. 1963.

53-707. Proportional registration of fleet vehicles. If any jurisdiction permits or requires the licensing of fleets of vehicles in interstate or combined interstate and intrastate commerce and payment of registration fees, license fees, taxes or other fixed fees thereon on an apportionment basis commensurate with and determined by the miles traveled on and the use made of said jurisdiction's highways, as compared with the miles traveled on and the use made of other jurisdiction's highways or any other equitable basis of apportionment, and exempts vehicles registered in other jurisdiction under such apportionment basis from the requirements of full payment of its own registration, license fees, taxes or other fixed fees, then the Montana motor vehicle reciprocity board may, by agreement, adopt such exemption with respect to vehicles of such fleets, whether owned by residents or nonresidents of this state and regardless of where based. Such agreements, under such terms, conditions or restrictions as the Montana motor vehicle reciprocity board deems proper, may provide that owners of vehicles operated in interstate or combined interstate and intrastate commerce in this state shall be permitted to pay registration, license fees, taxes or other fixed fees on an apportionment basis, commensurate with and determined by the miles traveled on and the use made of the highways of this state as compared with the use made of the highways of other jurisdictions or any other equitable basis of apportionment. No such agreement shall authorize, or be construed

as authorizing, any vehicle so registered to be operated in intrastate commerce in this state unless the owner thereof has been granted intrastate authority or rights by the Montana railroad and public service commission, if such grant is otherwise required by law. The Montana motor vehicle reciprocity board may adopt and promulgate such rules and regulations as it shall deem necessary to effectuate and administer the provisions of this subsection, and the registration of fleet vehicles under this act shall be subject to the rights, terms and conditions granted by or contained in any applicable agreement, arrangement or declaration made by the Montana motor vehicle reciprocity board.

History: En. Sec. 7, Ch. 206, L. 1963; amd. Sec. 1, Ch. 88, L. 1965.

Amendment

The 1965 amendment substituted "li-

cense fees, taxes" for "license taxes" near the beginning of the section and "license fees, taxes" for "license" following "registration" in two places.

53-708. Declarations of extent of reciprocity. In the absence of an agreement or arrangement with another jurisdiction, the Montana motor vehicle reciprocity board may examine the laws and requirements of such jurisdiction and declare the extent and nature of exemptions, benefits and privileges to be extended to vehicles properly registered or licensed in such other jurisdiction, or to the owners of such vehicles, which shall, in the judgment of the Montana motor vehicle reciprocity board, be in the best interest of this state and the citizens thereof, which shall be fair and equitable to this state and the citizens thereof, and all of the same shall be determined on the basis and recognition of the benefits which accrue to the economy of this state from the uninterrupted flow of commerce.

History: En. Sec. 8, Ch. 206, L. 1963.

53-709. Extension of reciprocal privileges to lessees authorized. An agreement or arrangement entered into, or a declaration issued under the authority of this act, may contain provisions under which a leased vehicle properly registered by the lessor thereof may be entitled, subject to terms and conditions stated therein, to the exemptions, benefits and privileges extended by such agreement, arrangement or declaration.

History: En. Sec. 9, Ch. 206, L. 1963.

53-710. Automatic reciprocity. On and after the effective date of this act, if no agreement, arrangement or declaration is in effect with respect to another jurisdiction as authorized by this act, any vehicle properly registered or licensed in such other jurisdiction, and for which evidence of compliance is supplied, shall receive, when operated in this state, the same exemptions, benefits and privileges granted by such other jurisdictions to vehicles properly registered in this state. Reciprocity extended under this subsection shall apply to commercial vehicles only when engaged exclusively in interstate commerce.

History: En. Sec. 10, Ch. 206, L. 1963.

53-711. Proportional registration not exclusive. Nothing contained in this act relating to proportional registration of fleet vehicles shall be

construed as requiring any vehicle to be proportionally registered if it is otherwise registered in this state for the operation in which it is engaged, including but not by way of limitation, regular registration, temporary registration, or trip permit or registration.

History: En. Sec. 11, Ch. 206, L. 1963.

53-712. Proportional registration of fleet vehicles, application, fee-formula and payment. (1) Any owner engaged in operating one or more fleets may, in lieu of registration of vehicles under other sections of Title 53, register and license each fleet for operation in this state by filing an application with the Montana highway commission which shall contain the following information, and such other information pertinent to vehicle registration as the Montana highway commission may require:

(a) Total fleet miles. This shall be the total number of miles operated in all jurisdictions during the preceding year by the vehicles in such fleet during said year.

(b) In-state miles. This shall be the total number of miles operated in this state during the preceding year by the vehicles in such fleet during said year.

(c) A description and identification of each vehicle of such fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested.

(2) The application for each fleet shall be accompanied by a fee payment computed as follows:

(a) Divide in-state miles by total fleet miles.

(b) Determine the total amount necessary to register each and every vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by section 53-122, R. C. M., 1947, as amended, and section 53-615, R. C. M., 1947, as amended and such property taxes if any be due thereon.

(c) Multiply the sum obtained under subsection (2) (b) hereof by the fraction obtained under subsection (2) (a) hereof.

History: En. Sec. 12, Ch. 206, L. 1963;
amd. Sec. 2, Ch. 88, L. 1965.

Amendment

The 1965 amendment added "and such property taxes if any be due thereon" at the end of paragraph (2) (b).

Compiler's Notes

Section 53-615, referred to in subsection (2) (b) of this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

53-713. Registration and identification of proportionally registered vehicles, effect of such registration. (1) The Montana highway commission shall register the vehicles so described and identified and shall issue a license plate or plates, or a distinctive sticker, or other suitable identification device, for each vehicle described in the application upon payment of the appropriate fees, and property taxes as provided by law, for such application and for the stickers or devices issued. A fee of two dollars (\$2.00) shall be paid for each license plate, sticker or device issued for each proportionally registered vehicle. A registration card shall

be issued for each proportionally registered vehicle. Such registration card shall, in addition to other information required by Title 53, bear upon its face the number of the license, sticker or other device issued for such proportionally registered vehicle and shall be carried in such vehicle at all times.

(2) Fleet vehicles so registered and identified shall be deemed fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, no such vehicle shall be operated in intrastate commerce in this state unless the owner thereof has been granted intrastate authority or rights by the Montana railroad and public service commission and unless said vehicle is being operated in conformity with such authority or rights.

History: En. Sec. 13, Ch. 206, L. 1963; amd. Sec. 3, Ch. 88, L. 1965.

Effective Date

Section 4 of Ch. 88, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

Amendment

The 1965 amendment inserted "and property taxes as provided by law" in the first sentence of subsection (1).

53-714. Proportional registration cannot be in a single jurisdiction. The right to the privilege and benefits of proportional registration of fleet vehicles extended by this act, or by any contract, agreement, arrangement or declaration made under the authority of this act, shall be subject to the condition that each fleet vehicle proportionally registered under the authority of this act shall also be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which it is proportionally registered in this state.

History: En. Sec. 14, Ch. 206, L. 1963.

53-715. Registration of additional fleet vehicles. Vehicles acquired by the owner after the commencement of the registration year and subsequently added to a proportionally registered fleet shall be proportionally registered by applying the mileage percentage used in the original application for such fleet for such registration period to the regular registration fees due with respect to such vehicle for the remainder of the registration year.

History: En. Sec. 15, Ch. 206, L. 1963.

53-716. Withdrawal of fleet vehicles, credits and accounting. If any vehicle is withdrawn from a proportionally registered fleet during the period for which it is registered under the provisions of this act, the owner of such fleet shall so notify the Montana highway commission on appropriate forms to be prescribed by the Montana motor vehicle reciprocity board. The Montana highway commission may require the owner to surrender proportional registration cards and such other identification devices which have been issued with respect to such vehicles as the Montana highway commission may deem advisable. If a vehicle is permanently withdrawn from a proportionally registered fleet because it has been destroyed, sold or otherwise completely removed from the service

of the registrant, the unused portion of the gross vehicle weight fees paid with respect to such vehicle, which shall be a sum equal to the amount paid with respect to such vehicle when it was first proportionally registered in such registration year, reduced by $1/12$ of the total annual gross vehicle weight fee of such vehicle for each calendar month and fraction thereof elapsing between the first day of the month of the current year in which the vehicle was registered and the date the notice of withdrawal is received by the Montana highway commission, shall be credited to the proportional registration account of such owner. Such credit shall be applied against liability for subsequent additions to be prorated during such registration year or for additional fees due upon audit under subsection 19 [53-719] hereof. If any such credit is less than five dollars (\$5.00), no credit shall be made or entered. In no event shall such amount be credited against fees other than those for such registration year, nor shall any such amount be subject to refund.

History: En. Sec. 16, Ch. 206, L. 1963.

53-717. New fleet—estimated mileage. The initial application for proportional registration of a fleet shall state the mileage data with respect to such fleet for the preceding year in this and other jurisdictions. If no operations were conducted with such fleet during the preceding year, the application shall contain a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions. The Montana highway commission shall determine the in-state and total fleet miles to be used in computing the fee payment for the fleet. The Montana highway commission may evaluate and adjust the estimate in the application if it is not satisfied as to the correctness thereof.

History: En. Sec. 17, Ch. 206, L. 1963.

53-718. Fleet registration may be denied. The Montana highway commission may refuse to accept proportional registration applications for the registration of vehicles based in, or owned by residents of, another jurisdiction if the Montana motor vehicle reciprocity board shall find that such other jurisdiction does not grant similar registration privileges to fleet vehicles based in or owned by residents of this state.

History: En. Sec. 18, Ch. 206, L. 1963.

53-719. Preservation of proportional registration records. Any owner whose application for proportional registration has been accepted shall preserve the records on which the application is based for a period of four (4) years following the year or period upon which said application is based. Upon request of the Montana highway commission, the owner shall make such records available to the Montana highway commission at its office for audit as to accuracy of computations and payments or to pay the reasonable costs of an audit at the home office of the owner, by a duly appointed representative of the Montana highway commission. The Montana highway commission may make arrangements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner.

History: En. Sec. 19, Ch. 206, L. 1963.

53-720. Relation to other state laws. The provisions of this act shall constitute complete authority for the registration of fleet vehicles upon a proportional registration basis without reference to or application of any other statutes of this state except as in this section expressly provided.

History: En. Sec. 20, Ch. 206, L. 1963.

53-721. Suspension of reciprocity benefits. Agreements, arrangements or declarations made under the authority of this act may include provisions authorizing the Montana highway commission to suspend or cancel the exemptions, benefits or privileges granted thereunder to a person who violates any of the conditions or terms of such agreements, arrangements or declarations or who violates the laws of this state relating to motor vehicles, or rules and regulations lawfully promulgated thereunder.

History: En. Sec. 21, Ch. 206, L. 1963.

53-722. Agreements to be written, filed and available for distribution. All agreements, arrangements or declarations or amendments thereto shall be in writing and shall be filed in the office of the secretary of the Montana motor vehicle reciprocity board. The secretary of the Montana motor vehicle reciprocity board shall provide copies for public distribution upon request.

History: En. Sec. 22, Ch. 206, L. 1963.

53-723. Reciprocity agreements in effect at time of act. All reciprocity and proportional registration agreements, arrangements and declarations relating to vehicles, in force and effect at the time this act becomes effective, shall continue in force and effect until specifically amended or revoked as provided by law or by such agreements or arrangements.

History: En. Sec. 23, Ch. 206, L. 1963.

53-724. Act part of and supplement to motor vehicle registration law. This act shall be a part of Title 53, R.C.M., 1947, as amended, and supplemental to the motor vehicle registration law of this state.

History: En. Sec. 24, Ch. 206, L. 1963.

Separability Clause

Section 25 of Ch. 206, Laws 1963 read "Severability. If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be

affected as a result of said part being held unconstitutional or invalid."

Repealing Clause

Section 27 of Ch. 206, Laws 1963 read "Section 53-625, R.C.M., 1947, as amended, is repealed."

Effective Date

Section 28 of Ch. 206, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

CHAPTER 8—MARKINGS ON TRUCKS AND HEAVY VEHICLES

Section 53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications.

53-802. Dealers and manufacturers exempt.

53-803. Penalty for violations.

53-801. Owner's name and certificate number to be displayed on heavy vehicles—specifications. No motor vehicle or combination of vehicles, except farm vehicles, having a gross weight of more than 10,000 pounds shall operate upon the highways of the state of Montana unless there shall be displayed on both sides of each vehicle operated under its own power, either alone or in combination, the name, or trade name and address or M.R.C. or I.C.C. certificate number of the person or corporation under whose jurisdiction the vehicle, or vehicles, is or are being operated.

The display of name must be in letters in sharp contrast to the background and size, shape, and color readily legible in daylight from a distance of fifty (50) feet while the vehicle is not in motion, and such display shall be kept and maintained in such manner as to remain so legible. The display may be accomplished either by painting the information on the vehicle or through the use of a decal or a removable device, so prepared as to otherwise meet the identification and legibility requirements of this act.

History: En. Sec. 1, Ch. 133, L. 1963. **Title of Act**

An act to provide for the marking of motor vehicles operating on the highways of the state of Montana, providing a penalty and providing an effective date.

53-802. Dealers and manufacturers exempt. This act shall not apply to motor vehicles being transported to dealers, from point of manufacture, or from one dealer to another, or when being demonstrated to a prospect, or delivered to a buyer from a dealer or a manufacturer.

History: En. Sec. 2, Ch. 133, L. 1963.

53-803. Penalty for violations. Any person convicted of violating this act shall be guilty of a misdemeanor and shall be punished for each offense by a fine of not more than one hundred dollars (\$100) or by imprisonment for not more than one (1) month, or both.

History: En. Sec. 3, Ch. 133, L. 1963. **Effective Date**

Section 4 of Ch. 133 read "The effective date of this act is July 1, 1963."

CHAPTER 9—REMOVAL AND SALE OF ABANDONED VEHICLES

- Section 53-901. Prohibition against parking or leaving vehicles on public or private property.
- 53-902. Taking vehicle into custody.
- 53-903. Notice to owner.
- 53-904. Reclaiming vehicle.
- 53-905. Sale of vehicle if not reclaimed.
- 53-906. Certificate of sale.
- 53-907. Issuing certificate of ownership.
- 53-908. Transmitting return of sale and balance of proceeds.
- 53-909. Penalty for violation and enforcement of provisions.

53-901. Prohibition against parking or leaving vehicles on public or private property. No vehicle shall be parked or left standing upon the right of way of any public highway for a period longer than forty-eight (48) hours, or upon a city street, any state, county or city property for a period longer than five (5) days.

History: En. Sec. 1, Ch. 288, L. 1967;
amd. Sec. 1, Ch. 169, L. 1969.

Amendments

The 1969 amendment inserted "for a period longer than forty-eight (48) hours" after "public highway" and made minor changes in phraseology.

Title of Act

An act to provide for the removal and disposal of abandoned motor vehicles and for related purposes.

53-902. Taking vehicle into custody. (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of forty-eight (48) hours or more on any public highway, or for a period of five (5) days or more on any city street, or public property.

(a) The Montana highway patrol if the vehicle is upon the right of way of any public highway other than county road.

(b) The sheriff of the county if the vehicle is upon the right of way of any county road or private property within the county.

(c) The city police if the vehicle is upon a city street within the city.

(2) The Montana highway patrol, sheriff of the county, or the city police may use its, or his personnel, equipment and facilities for the removal and preservation of the vehicle, or may hire other personnel, equipment and facilities for those purposes.

History: En. Sec. 2, Ch. 288, L. 1967;
amd. Sec. 2, Ch. 169, L. 1969.

sentence of subsection (1) to reduce the abandonment period for vehicles found on public highways from five days to forty-eight hours.

Amendments

The 1969 amendment revised the first

53-903. Notice to owner. (1) Within seventy-two (72) hours after any vehicle is removed and held by or at the direction of the Montana highway patrol or the city police, they shall notify the sheriff of the county in which the vehicle was located at the time it was taken into custody and the place where the vehicle is being held. In addition the Montana highway patrol or the city police shall furnish the sheriff a complete description of the vehicle to include year, make, model, serial number and license number, if available, any costs incurred to that date in the removal, preservation and custody of the vehicle, and any available information concerning its ownership.

(2) The sheriff shall make reasonable efforts to ascertain the name and address of the owner, lien holder, or person entitled to possession of the vehicle. If such name and address are ascertained, the sheriff shall notify such owner and lien holder or person of the location of the vehicle.

(a) If the vehicle is registered in the office of the registrar of motor vehicles of this state, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lien holder, if any, at the latest address shown by the records in the office of the registrar, return receipt requested and postage prepaid thereon, is mailed at least thirty (30) days before the vehicle is sold as hereinafter provided.

(b) If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner; or if it is im-

possible to determine with reasonable certainty the identity and addresses of all lien holders, notice by one (1) publication in one (1) newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this act. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be within the time requirements prescribed for notice by certified or registered mail and shall have the same contents required for a notice by certified or registered mail.

History: En. Sec. 3, Ch. 288, L. 1967.

53-904. Reclaiming vehicle. The owner, lien holder, or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the sheriff of the county in which the vehicle was located at the time it was taken into custody, satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, preservation and custody of the vehicle. He shall not be required to pay storage charges for a period longer than ninety (90) days.

History: En. Sec. 4, Ch. 288, L. 1967.

53-905. Sale of vehicle if not reclaimed. (1) If a vehicle is not reclaimed as provided in the preceding section within thirty (30) days after notification by registered or certified mail or prescribed publication, the sheriff of the county in which it is located at the time it was taken into custody, shall sell it at public auction in the manner provided in sections 93-5824 through 93-5832 of the Revised Codes of Montana, 1947.

(2) After any vehicle has been so sold, the former owner or person entitled to possession has no further right, title, claim or interest in or to the vehicle.

History: En. Sec. 5, Ch. 288, L. 1967.

53-906. Certificate of sale. (1) When any vehicle is so sold, the sheriff at the time of the payment of the purchase price, shall execute a certificate of sale in duplicate. He shall deliver the original certificate to the purchaser and retain the copy.

(2) The certificate of sale shall contain the name and address of the purchaser, the date of sale, the consideration paid, a description of the vehicle and a stipulation that no warranty is made as to the condition or title of the vehicle.

History: En. Sec. 6, Ch. 288, L. 1967.

53-907. Issuing certificate of ownership. The registrar of motor vehicles shall issue a certificate of ownership upon presentation by the purchaser of the certificate of sale and payment of the fees required by law.

History: En. Sec. 7, Ch. 288, L. 1967.

53-908. Transmitting return of sale and balance of proceeds. (1) When any vehicle is sold as provided in section 5 [53-905], the sheriff shall transmit to the registrar of motor vehicles and to the county treas-

urer a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale and the costs and expenses incurred in the removal, preservation and custody of the vehicle.

(2) With the return of sale, the sheriff shall transmit to the county treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale, and the costs and expenses incurred in the removal, preservation and custody of the vehicle.

(3) Upon receipt of the return of sale and such balance the county treasurer shall file the return in his office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol. The county treasurer shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, preservation and custody of vehicles seized by city police, and the city treasurer shall deposit such proceeds in the city street fund.

History: En. Sec. 8, Ch. 288, L. 1967.

53-909. Penalty for violation and enforcement of provisions. Any person or persons violating the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars (\$25), nor more than three hundred dollars (\$300), or by imprisonment in the county jail for not less than five (5) days, nor more than ninety (90) days, or by both fine and imprisonment.

History: En. Sec. 9, Ch. 288, L. 1967.

or void, the remainder of this act shall continue in full force and effect."

Separability Clause

Section 10 of Ch. 288, Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional

Effective Date

Section 11 of Ch. 288, Laws 1967 read "This act shall become effective from and after the 1st day of July, 1967."

CHAPTER 10—SNOWMOBILES

- Section 53-1001. Definition of terms.
 53-1002. Snowmobile registration.
 53-1003. Certificates of ownership.
 53-1004. Registration periods.
 53-1005. Exemption from registration.
 53-1006. Snowmobile operations.
 53-1007. Unlawful operation.
 53-1008. Administration.
 53-1009. Enforcement.
 53-1010. Disposal of proceeds from registration fees.
 53-1011. Penalties.

53-1001. Definition of terms. As used in this act, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning be intended:

a. "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

b. "Snowmobile" includes any self-propelled, track-driven, vehicle designed primarily for travel on snow or ice or natural terrain, which may be steered by wheels, skis, or runners, and which is not otherwise registered or licensed under the laws of the state of Montana.

c. "Owner" shall include every person as defined herein, other than a lien holder or other person having a security interest only, holding record title to a snowmobile, and entitled to the use or possession thereof.

d. "Operator" shall include every person who operates or is in actual physical control of the operation of a snowmobile.

e. "Roadway" shall include only those portions of any highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

History: En. Sec. 1, Ch. 326, L. 1969.

Title of Act

An act providing for registration, exemptions, transfer of ownership, and op-

eration of snowmobiles, establishing certificates of ownership, fees, and charges, and providing penalties for any violation of this act.

53-1002. Snowmobile registration. (1) No snowmobile shall be operated upon any public lands, trails, easements, lakes, rivers, or streams, unless it has first been registered in accordance with the provisions of this act. Application for registration shall be made to the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose, and to provide for substantially the following information: Name of owner, residence by town and county, business or home mail address, name and address of lien holder, amount due under contract or lien, name and address of manufacturer, model number or name, serial number, and name and address of dealer or other person from whom acquired. The application shall be signed by at least one owner, or by a properly authorized officer or representative of the owner.

(2) If a snowmobile has previously been registered, under the provisions of this act, the application for registration must be accompanied by the immediately previous registration receipt, or by an affidavit upon a prescribed form, stating under oath that the vehicle had not been operated during the immediately previous year.

(3) Upon receipt of the application, such supporting papers as may be required, and the appropriate fee as hereinafter provided, such snowmobile shall be registered and a registration number assigned which shall be affixed to the snowmobile in such manner as may be prescribed.

(4) The registration requirements of this act shall apply to snowmobiles owned and operated by manufacturers, distributors, or dealers, except that the description of the snowmobile shall be omitted from the form furnished for this purpose, and such registration number shall be permitted to be transferred from one snowmobile to another. In lieu of the descriptive material on the form, the word "manufacturer," "distributor," or "dealer" will appear on the form. The manufacturer, distributor, or dealer may have the number assigned printed on or attached to a removable sign or signs to be temporarily but firmly mounted upon

or attached to a snowmobile, to be tested or demonstrated, as long as the number is exhibited so as to in all other respects meet the requirements of the act relating to registration and display of number.

(5) The total fee which may be charged each applicant for registration of snowmobiles shall be established by the registrar of motor vehicles, provided that the annual registration fee for each snowmobile shall not be less than six dollars (\$6). Such fee shall also apply to manufacturers, distributors, or dealers who are registered in conformity with the requirements of this act as provided in this section.

History: En. Sec. 2, Ch. 326, L. 1969.

53-1003. Certificates of ownership. Upon completion of the application of registration, in quintuplicate, on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two copies of the application marked "owner's certificate of registration," one of which shall be marked "file copy," and forward one copy and the application to the registrar of motor vehicles, who shall cause to be entered the information contained in the application upon the corresponding records of his office, and shall furnish the applicant a certificate of ownership, which shall contain the information found on the registration, and the owner shall, at all times, retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation.

History: En. Sec. 3, Ch. 326, L. 1969.

53-1004. Registration periods. All registrations of snowmobiles shall expire annually on the thirtieth day of June.

History: En. Sec. 4, Ch. 326, L. 1969.

53-1005. Exemption from registration. No registration hereunder shall be required for snowmobiles owned or used by the United States or another state or any agency or political subdivision thereof, or any snowmobile registered in a country other than the United States and to be temporarily used within this state for a period of not more than thirty days, or any snowmobile registered in another state of the United States, but to be temporarily used within this state for not more than thirty days. Snowmobiles owned by the state of Montana, or any agency or political subdivision thereof, shall be exempt only from the payment of fees, but shall otherwise comply with all requirements for registration. No registration hereunder shall be required for snowmobiles used and operated entirely and exclusively upon the owner's own property.

History: En. Sec. 5, Ch. 326, L. 1969.

53-1006. Snowmobile operations. (1) No person shall operate a snowmobile upon a controlled-access highway or facility. Snowmobile operation may be permitted on the roadway or shoulder of any other public road or highway, state highway, county road, or city street, located within the boundaries of any municipality, as provided in this act.

(2) A snowmobile may make a direct crossing of a street or highway, where such crossing is necessary to get to another authorized area of operation. Such crossing shall be made at an angle of approximately ninety degrees (90°) to the direction of the highway, at a place where no obstruction prevents a quick and safe crossing. The snowmobile shall make a complete stop before entering upon any part of the highway or road, and the operator shall yield the right of way to all oncoming traffic.

(3) No snowmobile shall be operated upon a public street or highway when permitted to do so by this act, unless equipped with at least one head lamp and one tail lamp, which shall be lighted at all times during such operation, and unless equipped with a suitable braking device which may be operated by either hand or foot.

(4) The prohibition against operating snowmobiles upon public streets or highways shall apply to controlled-access highways and facilities but not apply to any other street or highway drifted or covered by snow to such an extent that travel thereon by other motor vehicles is impractical or impossible, or when the operator is in possession of a written permit for such travel, issued by an appropriate authority, or upon those streets of a municipality where such operation has been specifically so authorized by a duly enacted municipal ordinance.

History: En. Sec. 6, Ch. 326, L. 1969.

53-1007. Unlawful operation. It shall be unlawful for any person to drive or operate any snowmobile in any one or more of the following manners:

a. At a rate of speed greater than reasonable or proper under all existing circumstances;

b. While under the influence of intoxicating liquor or narcotics or habit-forming drugs;

c. In a careless or reckless manner so as to endanger the person or property of another, or to cause injury or damage to either;

d. Without a lighted head and tail light between the hours of dusk and dawn, when upon or crossing any public road, or when otherwise required for safety of others;

e. Operating a snowmobile, or permitting such operation, by any person who by reason of physical or mental disability is incapable of operating the snowmobile as required for safety under the prevailing circumstances;

f. For the purpose of driving, rallying or harassing any of the game animals, game birds, or fur-bearing animals of the state, or any livestock, provided, however, that an owner of livestock is not prohibited from managing or driving his own livestock by the use of snowmobiles and may direct other persons to so manage or drive his livestock;

g. Without a muffler in good working order and in constant operation which prevents excessive or unusual noise and annoying smoke.

History: En. Sec. 7, Ch. 326, L. 1969.

53-1008. Administration. The administration of this act, for registration of snowmobiles, issuing of certificates of title, and collection of

fees and charges, shall be the responsibility of the registrar of motor vehicles. All records of the registrar made or kept pursuant to this act shall be public records, and the registrar may employ or retain such persons as may be necessary to carry out the provisions of this act, fix their salaries and compensation for expenses, and make and authorize such other expenditures as may be necessary to properly carry out his duties and responsibilities. The registrar shall establish and publish a schedule of fees and charges to be made by him under the authority of this act. Such fees and charges shall be fair and reasonable, consistent with the provisions and purposes of this act, and based upon such classifications as may be deemed necessary and appropriate. The registrar shall prepare and furnish all forms necessary for registration of snowmobiles, and shall prepare and furnish the necessary forms for issuing certificates of title.

History: En. Sec. 8, Ch. 326, L. 1969.

53-1009. Enforcement. The fish and game commission of the state of Montana shall enact and publish reasonable rules and regulations necessary to the enforcement of this act, but not inconsistent with any of its provisions. All records of the commission made or kept pursuant to this act shall be public records. The fish and game commission, enforcement personnel, the sheriffs and their deputies of the various counties of the state, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this act.

History: En. Sec. 9, Ch. 326, L. 1969.

53-1010. Disposal of proceeds from registration fees. The fees derived from registration of snowmobiles shall be deposited as follows:

- (1) One-third shall be deposited in the motor vehicle recording account in the earmarked revenue fund;
- (2) One-third shall be deposited in the county motor vehicle fund of the county in which the snowmobile is registered;
- (3) One-third shall be deposited in the earmarked revenue fund to the credit of the fish and game commission to be used in improving and maintaining landlocked Montana state parks.

History: En. Sec. 10, Ch. 326, L. 1969.

53-1011. Penalties. Violations of any section of this act shall be misdemeanors, and punishable by fine or imprisonment or both, as follows:

a. For careless or reckless operation of a snowmobile, or for the operation of a snowmobile while under influence of intoxicants or narcotics, a fine of not more than one hundred dollars (\$100) or imprisonment for not more than thirty (30) days or both.

b. For violation of any other provision of this act, or of any rule or regulation established hereunder, a fine not to exceed one hundred fifty dollars (\$150).

History: En. Sec. 11, Ch. 326, L. 1969.

TITLE 54—NARCOTIC DRUGS

Chapter 1. Dangerous Drug Act, 54-129 to 54-138.

CHAPTER 1—DANGEROUS DRUG ACT

- Section 54-129. Definition of terms.
54-130. Authority of the state board of pharmacy to enact regulations, impose fees and designate dangerous drugs.
54-131. Dangerous drugs—persons and preparations exempt from the prohibition.
54-132. Criminal sale of dangerous drugs.
54-133. Criminal possession of dangerous drugs.
54-134. Fraudulently obtaining dangerous drugs.
54-135. Altering labels on dangerous drugs.
54-136. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs.
54-137. Alternative sentencing authority.
54-138. Jurisdiction.

54-101 to 54-128. Repealed.

Repeal

Sections 54-101 to 54-128 (Secs. 1 to 26, 28, 30, Ch. 176, L. 1937; Secs. 1 to 3, Ch. 146, L. 1941; Sec. 1, Ch. 12, L. 1949; Secs. 1, 2, Ch. 174, L. 1953; Secs. 1 to 7, Ch. 7,

L. 1955; Sec. 1, Ch. 6, L. 1959), the Uniform Drug Act, was repealed by Sec. 14, Ch. 314, Laws 1969. For present provisions see sec. 54-129 et seq.

54-129. Definition of terms. (a) "Person" includes an individual, partnership, corporation, association, trust or other institution or entity.

(b) "Drug" means articles recognized in the official United States Pharmacopoeia, official Homopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them.

(c) "Depressant drugs" include: Amobarbital, secobarbital, pentobarbital, phenobarbital, barbituric acid, glutethimide, meprobamate, chloral hydrate, paraldehyde, ethchlorvynol, and ethinamate, or any product, derivative, compound or preparation containing any of the above listed drugs.

(d) "Stimulant drugs" include: Amphetamine, dextroamphetamine, mephentermine, methamphetamine and phenametrazine, or any product, derivative or compound or preparation of the above listed drugs.

(e) "Hallucinogenic drugs" include: Marihuana, lysergic acid diethylamide, psilocybin, dimethyltryptamine, methyltryptamine, peyote and mescaline or any product, derivative, compound or preparation of the above listed drugs.

(f) "Narcotic drugs" include: Opium, morphine, heroin, codeine, ethylmorphine, dihydromorphinone, isonipecaine, methadone and cocaine or any product, derivative, compound or preparation of the above listed drugs.

(g) "Dangerous drug" means any depressant, stimulant, hallucinogenic or narcotic drug.

(h) The terms "manufacture, preparation, cultivation, compounding, or processing" shall include repackaging or otherwise changing the container, wrapper, or labeling of any drug package in furtherance of the distribution of the drug from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer.

(i) The term "warehousing" means the receipt and storage of goods for compensation prior to final delivery or sale to the ultimate consumer.

(j) The term "wholesaling, jobbing or distribution" means the selling or distribution to any person who is not the ultimate user or consumer of such drug.

(k) "Sell" means to sell, exchange, give or dispose of to another, or to offer or agree to do the same.

(l) "Practitioner" means a physician, dentist, veterinarian, podiatrist or other person permitted by law to prescribe drugs.

(m) "Manufacturer" means a person who by compounding, mixing, cultivating, growing, or other process, produces or prepares dangerous drugs, but does not include a pharmacist who compounds dangerous drugs to be sold or dispensed on prescriptions.

(n) Masculine words shall include the feminine and neuter and singular includes the plural.

(o) The term "prescription" shall be given the meaning it has in R. C. M. 1947, section 66-1502 (n).

(p) This act may be cited as the "Montana Dangerous Drug Act."

History: En. Sec. 1, Ch. 314, L. 1969.

Title of Act

An act providing for regulation of the possession and sale of dangerous drugs in the state of Montana; defining dangerous drugs to include depressant, stimulant, hallucinogenic and narcotic drugs and defining certain words and phrases in connection therewith; defining who may lawfully sell and possess dangerous drugs; providing for the fraudulent obtaining of dangerous drugs or the alteration of la-

bels; providing for the enforcement of unlawful sale and possession; providing for the state board of pharmacy to regulate, license and supervise, and designate other dangerous drugs after proper notice and hearing; amending section 95-302, R. C. M. 1947, to exclude trial jurisdiction in the justices' courts in cases commenced under this act; repealing sections 27-724, 27-725, 54-101 through 54-128 inclusive, 94-35-123, 94-35-148, 94-35-199, R. C. M. 1947.

54-130. Authority of the state board of pharmacy to enact regulations, impose fees and designate dangerous drugs. (a) Registration and licensing. The state board of pharmacy is hereby authorized to register manufacturers, and to license, regulate and supervise the warehousing, wholesaling, distributing, sale, purchase, dispensing and any other processing of all dangerous drugs, which is necessary to carry out the enforcement of this act.

(b) Fees. The state board of pharmacy is hereby authorized to require registration and license fees in an amount to be fixed by the board, which fees shall not exceed one hundred dollars (\$100) per year.

(c) Dangerous drug designation. Any drug designated by the state board of pharmacy as a dangerous drug because of its depressant, stimulant, hallucinogenic or narcotic effects, after notice, hearing and pub-

lication as required by law, shall be added to the appropriate definitions of section [subsection] (c), (d), (e), or (f) of section 1 [54-129] for the purpose of the Montana Dangerous Drug Act.

(d) Penalties. Failure to register or be licensed as provided for shall be a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) or imprisonment in the county jail for not to exceed one (1) year, or both.

History: En. Sec. 2, Ch. 314, L. 1969.

Cross-References

Designation of dangerous drugs, sec. 66-1504.1.

Justices' courts jurisdiction, sec. 95-302.

54-131. Dangerous drugs—persons and preparations exempt from the prohibition. (1) The following medicinal preparations are excepted from the designated criminal offenses of sections 4 and 5 [54-132 and 54-133] of this act when combined with therapeutically active or inactive nonnarcotic ingredients:

(a) A preparation which contains not more than 64.8 mg. (1 grain) of codeine or any of its salts, per one fluid ounce, or one avoirdupois ounce.

(b) Any preparation which contains cotarnine, nalorphine, narceine, noscapine, or papaverine in any quantity. These medicinal preparations must contain, in addition to the narcotic drug in it, other medicinal qualities; and be administered, dispensed and sold in good faith as a medicine, not for the purpose of evading this act.

(2) The following persons are excepted from the designated criminal offenses of sections 4 and 5 [54-132 and 54-133] of this act while acting in the ordinary and authorized course of their business, profession, occupation, employment or religious activity and whose activities in connection with dangerous drugs are solely as specified in this section;

(a) Persons regularly engaged in manufacture, preparation, cultivation, compounding and processing who are qualified in conformance with law, in preparing pharmaceutical chemicals or prescription drugs for distribution through branch outlets, wholesale druggists, or by direct shipment, (1) to pharmacies or to hospitals, clinics, public health agencies, long-term care facilities, or practitioners, for dispensing by registered pharmacists upon prescriptions, or for use by or under the supervision of practitioners, or (2) to laboratories or research or educational institutions for their use in research, teaching or chemical analysis.

(b) Suppliers (otherwise qualified in conformance with law) of persons regularly engaged in manufacture, preparation, cultivation, compounding and processing referred to in subsection (a).

(c) Wholesale druggists who maintain establishments in conformance with law and are regularly engaged in supplying prescription drugs (1) to pharmacies, or to hospitals, clinics, public health agencies, long-term care facilities, or practitioners, for dispensing by registered pharmacists upon prescriptions, or for use by or under the supervision of practitioners or (2) to laboratories or research or educational institutions for their use in research, teaching or clinical analysis.

(d) Registered pharmacists who are authorized to dispense dangerous drugs.

(e) Practitioners who prescribe or administer dangerous drugs.

(f) Persons associated with a bona fide educational institution who use dangerous drugs in research, teaching or chemical analysis and not for sale.

(g) A common on [or] contract carrier or warehouseman, whose possession of any dangerous drug is in the usual course of his business or employment as such.

(h) Officers and employees of the state, or a political subdivision of the state, while acting in the course of their official duties.

(i) An employee or agent of any person described in paragraphs (a) through (g) of this subsection, and nurse or other medical technician under the supervision of a practitioner who administers dangerous drugs, while such employee, nurse or medical technician is acting in the course of his employment or occupation and not on his own account.

(j) A person to whom or for whose use any dangerous drug has been prescribed, sold, or dispensed by an authorized practitioner or pharmacist may lawfully possess such drug.

(k) Any bona fide religious organization incorporated under the laws of the state of Montana while transporting, possessing or using peyote (pellote) for religious sacramental purposes.

Nothing in this section shall be construed to prohibit or interfere with the discretion of a practitioner in good faith to prescribe or administer any dangerous drug to a patient for the treatment of a disease or condition according to his needs and to medical practice. Addiction, dependence or habitual use of a dangerous drug shall be deemed a "disease or condition" and the prescription, administration or dispensation of a dangerous drug to relieve conditions incident to such addiction or habitual use shall be deemed "treatment of a disease or condition."

Nothing in this act shall be construed to relieve any person from any requirement prescribed by or under authority of Title 27, R. C. M. 1947.

History: En. Sec. 3, Ch. 314, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed word "or" in subdivision (2) (g).

54-132. Criminal sale of dangerous drugs. (a) A person commits the offense of a criminal sale of dangerous drugs if he sells, manufactures, prepares, cultivates, compounds or processes any dangerous drug as defined in this act and does not come within the exceptions of section 3 [54-131].

(b) A person convicted of criminal sale of dangerous drugs shall be imprisoned in the state prison for a term not less than one (1) year nor more than life. Any person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

History: En. Sec. 4, Ch. 314, L. 1969.

54-133. Criminal possession of dangerous drugs. (a) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug as defined in this act and does not come within the exceptions of section 3 [54-131].

(b) A person convicted of criminal possession of dangerous drugs shall be imprisoned by imprisonment in the state prison not to exceed five (5) years. Any person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

History: En. Sec. 5, Ch. 314, L. 1969.

DECISIONS UNDER FORMER LAW

Exclusive Nature of Statute

Marijuana seized in private residence under search warrant issued by justice of peace was unlawfully seized and warrant was void since, under former section 54-112, only district judge could issue search warrant for narcotics and no search warrant could be issued to search private residence for narcotics. The provisions of former Uniform Drug Act were sole and exclusive provisions governing issuance of search warrants authorizing lawful search

and seizure of narcotic drugs and state's contentions that statute applied only to in rem proceedings to seize and destroy contraband narcotics and did not apply to in personam proceedings against possessor which are governed by criminal code could not be sustained. *State v. Langan*, 151 M 558, 445 P 2d 565, accord, *State v. Kurland*, 151 M 569, 445 P 2d 570 (marijuana inadmissible in criminal prosecution for possession against social guest).

54-134. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug by (a) fraud, deceit, misrepresentation or subterfuge; (b) falsely assuming the title of, or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other persons authorized to possess dangerous drugs; (c) the use of a forged, altered or fictitious prescription; (d) the use of a false name or a false address on a prescription or; (e) the concealment of a material fact.

History: En. Sec. 6, Ch. 314, L. 1969.

54-135. Altering labels on dangerous drugs. A person commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to a package or receptacle containing a dangerous drug, or otherwise misrepresents the package containing a dangerous drug.

History: En. Sec. 7, Ch. 314, L. 1969.

54-136. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs. A person convicted of fraudulently obtaining dangerous drugs or altering the labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed six (6) months.

History: En. Sec. 8, Ch. 314, L. 1969.

54-137. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs, fraudulently obtaining dangerous drugs or altering labels on dangerous drugs, if he is shown to be an

excessive or habitual user of dangerous drugs either from the face of the record or by a presentence investigation, may in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than six (6) months nor more than two (2) years.

History: En. Sec. 9, Ch. 314, L. 1969.

54-138. Jurisdiction. The district court shall have exclusive trial jurisdiction over all prosecutions commenced under the Montana Dangerous Drug Act.

History: En. Sec. 10, Ch. 314, L. 1969.

TITLE 55—NEGOTIABLE INSTRUMENTS

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

55-101 to 55-1801. (8401 to 8493, 8495 to 8597) Repealed.

Repeal

These sections (Sec. 4240, Civ. C. 1895; Secs. 5842 to 5934, 5936 to 6037a, Rev. C. 1907; Secs. 8401 to 8493, 8495 to 8597,

R.C.M. 1921), the Uniform Negotiable Instruments Law, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

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Containing

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REPLACEMENT VOLUME 4 (PART 1) OF
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TITLE 56—NOTARIES AND COMMISSIONERS OF DEEDS

CHAPTER 1—NOTARIES PUBLIC

56-107. (391) Repealed.

Repeal

This section (Sec. 914, Pol. C. 1895), relating to protests of bills or notes, was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 57—NUISANCES

CHAPTER 1—NUISANCES PUBLIC AND PRIVATE—REMEDIES

57-101. (8642) Nuisance defined.

Sale of Milk at Less than Minimum Price

A sale of milk at a price less than the minimum prescribed by the Montana milk control board under section 27-407, was a nuisance, being an activity which was injurious to health. *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 517.

Sports Activities

"Pee wee" baseball league conducted on empty lot in residential district was not nuisance under statute, notwithstanding

evidence that: field was brightly illuminated, crowds were noisy, traffic was heavy, field was dusty, some children used foul language, balls were hit into neighboring yards thereby damaging lawns and flowers and games were played after 10 p.m.; nuisance, if any, was private and arose out of particular manner of operation of legitimate enterprise and lower court should have done no more than point out nuisance and decree methods calculated to eliminate it. *Kasala v. Kalispell Pee Wee Baseball League*, 151 M 109, 439 P 2d 65.

57-102. (8643) Public nuisance.

References

Cited in *Montana Milk Control Board v. Rehberg*, 141 M 149, 376 P 2d 508, 517.

TITLE 58—OBLIGATIONS

CHAPTER 2—JOINT AND SEVERAL, CONDITIONAL AND ALTERNATE OBLIGATIONS

58-202. (7398) When joint and several.

Successive Judgments against Co-obligors

Entry of default judgment against codefendant does not bar entry of subsequent judgment against co-obligor on same obligation where obligation was joint and several, thereby permitting successive judgments

against each in amount of total obligation of both. Common-law rule that judgment on joint obligation against one of two joint obligors forecloses later judgment against other was abrogated by statute. *White v. Nollmeyer*, 151 M 387, 443 P 2d 873.

58-210. (7406) When performance, etc., excused.

References

Laughnan v. Sorenson, 139 M 531, 366 P 2d 433, 435.

CHAPTER 3—TRANSFER OF OBLIGATIONS

58-301. (7413) Burden of obligation not transferable.

References

Kintner v. Harr, 146 M 461, 408 P 2d 487.

58-303. (7415) Nonnegotiable instrument may be transferred.

Chattel Mortgage

The assignee of a chattel mortgage given by the buyer of an automobile took the mortgage subject to the buyer's defenses

and equities which existed at the time of the assignment of the instrument. *Sonnek v. Universal C. I. T. Credit Corp.*, 140 M 503, 374 P 2d 105, 108.

58-304. (7416) Covenants running with land, nature and effect of.

Lease with Right of First Refusal

Clause in lease providing lessee with right of first refusal if lessor should decide to sell was covenant that ran with land during term of lease and was apportioned among heirs of deceased lessor according to their respective interest in whole of property and bound them in

same manner as if they had personally entered into covenant. *Weintz v. Bumgarner*, 150 M 306, 434 P 2d 712.

References

Kosel v. Stone, 146 M 218, 404 P 2d 894.

58-305. (7417) What covenants run with land.

References

Kosel v. Stone, 146 M 218, 404 P 2d 894.

58-306. (7418) Same—covenant for benefit of property.

References

Kosel v. Stone, 146 M 218, 404 P 2d 894.

58-307. (7419) Same—covenants to pay rent, etc.**References**

Kosel v. Stone, 146 M 218, 404 P 2d 894.

58-308. (7420) What covenants run with land when assigns, etc.**References**

Kosel v. Stone, 146 M 218, 404 P 2d 894.

58-309. (7421) Who are bound by covenants.**References**

Kosel v. Stone, 146 M 218, 404 P 2d 894.

58-311. (7423) Apportionment of covenants.**Lease with Right of First Refusal**

Clause in lease providing lessee with right of first refusal if lessor should decide to sell was covenant that ran with land during term of lease and was apportioned among heirs of deceased lessor

according to their respective interest in whole of property and bound them in same manner as if they had personally entered into covenant. Weintz v. Bumgarner, 150 M 306, 434 P 2d 712.

CHAPTER 4—EXTINCTION OF OBLIGATIONS BY PERFORMANCE, OFFER OF PERFORMANCE AND PREVENTION OF PERFORMANCE

58-410. (7433) By whom to be made.**References**

Schultz v. Campbell, 147 M 439, 413 P 2d 879.

58-423. (7446) Extinction of pecuniary obligation.**References**

United States v. George A. Fuller Co., 250 F Supp 649.

58-427. (7450) Effect of offer on interest and accessories of obligation.**References**

Schultz v. Campbell, 147 M 439, 413 P 2d 879; United States v. George A. Fuller Co., 250 F Supp 649.

58-429. (7452) What excuses performance, etc.**References**

Schultz v. Campbell, 147 M 439, 413 P 2d 879.

58-430. (7453) Effect of prevention of performance.**References**

Schultz v. Campbell, 147 M 439, 413 P 2d 879.

CHAPTER 5—EXTINCTION OF OBLIGATIONS BY ACCORD
AND SATISFACTION, NOVATION AND RELEASE

58-502. (7457) Effect of accord.

Unsatisfied Accord

Where buyer of ranch agreed to take over the debt of the seller on mortgaged sheep on the property, but the agreement and promise of settlement of the debt

were never completed, there was no satisfaction and seller was still liable for the debt. *Goggins v. Bookout*, 141 M 449, 378 P 2d 212.

58-503. (7458) Satisfaction, what constitutes.

References

Goggins v. Bookout, 141 M 449, 378 P 2d 212.

58-509. (7464) Obligation extinguished by release.

Avoidance

Where plaintiff, in his reply, alleged that the release pleaded by defendant's answer was procured through fraud, raising an issue of fact concerning a voidable release, whether or not there was sufficient fraud to avoid the release was a question for the jury to determine under proper instruction. *Westfall v. Motors Ins. Corp.*, 140 M 564, 374 P 2d 96, 99.

Rescission

A release, being a contract, is subject to rescission for the same reasons as other contracts, including fraud or mistake of fact. *Westfall v. Motors Ins. Corp.*, 140 M 564, 374 P 2d 96, 98, 99.

CHAPTER 6—OBLIGATIONS IMPOSED BY LAW

58-607. (7579) Responsibility for willful acts, negligence, etc.

Breach of Duty to Warn

Corporation was liable for death of plaintiff's dairy cows pastured on a strip of land adjoining electric substation of corporation and for losses occasioned by poisoning resulting from its use of chemical sprayed upon grass and weeds, which it knew was dangerous to animals, where it failed to warn plaintiff of the danger. *Hopkins v. Ravalli County Electric Co-operative, Inc.*, 144 M 161, 395 P 2d 106, 109, 12 ALR 3d 1096.

Livestock on Highway

It was not negligent for owner of livestock to pasture horses in area of open range country in which horses might wander onto highway during course of grazing, in the absence of evidence that owner willfully and intentionally drove horse onto highway right of way. *Bartsch v. Irvine Co.*, 149 M 405, 427 P 2d 302.

TITLE 59—OFFICES AND OFFICERS

- Chapter 5. Prohibitions and general provisions applicable to public officers, 59-514, 59-516, 59-516.1, 59-538.
7. The fiscal year—official reports, 59-701.
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 11. Federal Social Security Act—coverage of certain officers and employees, 59-1103.1, 59-1104, 59-1105, 59-1106, 59-1110.
 12. Personnel administration law, Repealed—Section 9, Chapter 3, Ex. Laws of 1967.

CHAPTER 1—CLASSIFICATION OF PUBLIC OFFICERS

59-101. (50) Classification of public officers.

Compiler's Notes

Chapter 293, Laws 1969 created a commission for the conduct of a study of the reorganization of the executive branch of

state government and for the purpose of preparing a report and recommendations to the legislative assembly no later than December 1, 1970.

CHAPTER 4—APPOINTMENTS, NOMINATION AND OATH OF OFFICE

59-405. (422) Term of office, when not prescribed.

Constitutionality

This section is not violative of section 18, article V of the constitution. State ex rel. MacGilvra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

Removal of Director of State Historical Society

Under this section and sections 44-519 and 44-523 the power to remove the director of the state historical society lies in the board of trustees of the state historical society and it may do so without notice or opportunity to be heard. State ex rel. MacGilvra v. District Court of the First Judicial District, 148 M 182, 418 P 2d 874, 876.

CHAPTER 5—PROHIBITIONS AND GENERAL PROVISIONS APPLICABLE TO PUBLIC OFFICERS

- Section 59-514. Destruction of old county records may be ordered by commissioners with examiner's approval—destruction of old school district records may be ordered by trustees with examiner's approval.
- 59-516. Certain records to be destroyed after twenty-five (25) years.
- 59-516.1. Security agreements.
- 59-538. Expenses of persons in state service—per diem allowance.

59-514. (455.2) Destruction of old county records may be ordered by commissioners with examiner's approval—destruction of old school district records may be ordered by trustees with examiner's approval. (1) Any county officer may destroy old worthless reports, papers or records in his office that have served their purpose and that are substantiated by permanent records, upon the order of the board of county commissioners and with the approval of the state examiner.

(2) A school officer may destroy old worthless reports, papers or records in his office that have served their purpose and that are sub-

stantiated by permanent records, upon the order of the board of trustees and with the approval of the state examiner.

History: En. Sec. 2, Ch. 92, L. 1935;
amd. Sec. 1, Ch. 166, L. 1967.

Amendments

The 1967 amendment numbered the first paragraph subsection (1), and added subsection (2).

59-516. (455.4) Certain records to be destroyed after twenty-five (25) years. Any claim, warrant, voucher, bond or treasurer's general receipt may be destroyed by any county, city or town or school district officer after a period of twenty-five (25) years.

History: En. Sec. 4, Ch. 92, L. 1935;
amd. Sec. 12, Ch. 189, L. 1953; amd. Sec.
1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L.
1967.

"Under no circumstances shall any claim, warrant, voucher, bond or treasurer's general receipt be destroyed by any county, city or town officer."

The 1967 amendment inserted "or school district" after "town," and made a minor style change.

Amendments

The 1963 amendment completely rewrote this section, which formerly read:

59-516.1. Security agreements. Termination statements filed under the Uniform Commercial Code—Secured Transactions shall be retained by the filing officer for a period of eight (8) years after receipt, after which they may be destroyed. Financing statements, continuation statements, statements of assignment, and statements of release, the filing of which is authorized by the Uniform Commercial Code—Secured Transactions and as to which no termination statement has been filed, shall be retained by the filing officer for a period of eight (8) years after lapse of the original financing statement or of the latest continuation statement, whichever is later. At the expiration of such period all such statements may be destroyed. [Effective January 1, 1965.]

History: En. 59-516.1 by Sec. 11-144,
Ch. 264, L. 1963.

59-538. Expenses of persons in state service—per diem allowance. Every person engaged in any service in every department of state, except the governor and the attorney general, state auditor, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, clerk of the supreme court and justices of the supreme court who shall be paid actual and necessary expenses as hereinafter provided exclusive of persons in appointive positions, or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, supervisory or extension work or otherwise, of every kind and character, shall be allowed; for the time engaged in such travel, thirteen dollars and fifty cents (\$13.50) per day for such travel within the state of Montana, and for travel outside the state of Montana the sum of twenty-two dollars and fifty cents (\$22.50) per day for meals and other necessary expenses; provided, that the provisions of this act shall not apply to persons holding offices specifically provided for in section 93-305, or section 93-313; provided

that nothing herein contained shall be construed as affecting the validity of section 43-310; and provided further that the provisions of this act shall not apply to the elective state public officers of the state of Montana. The governor shall be authorized actual and necessary expenses not to exceed sixty dollars (\$60) per day. The attorney general, state auditor, superintendent of public instruction, railroad commissioners, secretary of state, state treasurer, clerk of supreme court and justices of supreme court shall be authorized actual and necessary expenses not to exceed forty dollars (\$40) per day while engaged in state service away from Montana.

History: En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963; amd. Sec. 1, Ch. 48, L. 1967; amd. Sec. 1, Ch. 273, L. 1969.

Amendments

The 1963 amendment increased per diem allowance within the state from \$8 to \$10 and per diem allowance without the state from \$11 to \$16.

The 1967 amendment increased per diem allowances within the state from \$10 to \$12 per day; substituted "and for travel * * * and other necessary expenses" for "and sixteen dollars (\$16) per day for such travel outside the state of Montana" after "Montana"; and increased the actual expense limit for elected officers from \$15 to \$20 per day.

The 1969 amendment, in the first sentence, inserted "except the governor * * * as hereinafter provided," substituted "exclusive" for "inclusive" before "of persons in appointive positions"; raised the per diem travel allowance within the state from \$12 to \$13.50 and the allowance for travel outside the state from \$20 to \$22.50; deleted "who shall in lieu thereof be authorized actual and necessary expenses while engaged in state service away from Helena, not to exceed twenty dollars (\$20) per day" at the end of the sentence; and added the last two sentences.

Effective Date

Section 2 of Ch. 273, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 7, 1969.

CHAPTER 7—THE FISCAL YEAR—OFFICIAL REPORTS

Section 59-701. Fiscal year and financial reports.

59-701. (518) Fiscal year and financial reports. The fiscal year for state purposes commences on the first (1st) day of July of each year, and ends on the last day of June of each year. The fiscal year for county purposes commences on the first (1st) day of July of each year and ends on the last day of June of each year. At the close of each fiscal year the fiscal records of each state office, department, bureau, commission, institution, university unit, and agency (hereinafter collectively referred to as state agency) shall be closed as of the end of the fiscal year. Each state agency shall prepare such financial statements and reconciliations for the fiscal year as the state controller may prescribe. These financial reports are to be completed and distributed not more than thirty-one (31) days following the close of each fiscal year. The state controller may extend this time limit if a state agency can show necessity therefor. The reports are to be distributed to the state controller and the legislative auditor and any other state agency the state controller may prescribe. It is the intent of this provision that these reports accurately and comprehensively present the financial activities of the reporting state agency so that the reports can be effectively utilized by the executive and legislative branches of state government.

Upon consolidation of the reports, the annual financial report by the state controller will be available for other individuals and organizations interested in the financial affairs of the state of Montana.

History: En. Sec. 3821, Pol. C. 1895; re-en. Sec. 2594, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1921; re-en. Sec. 518, R. C. M. 1921; amd. Sec. 1, Ch. 121, L. 1953; amd. Sec. 1, Ch. 84, L. 1955; amd. Sec. 2, Ch. 127, L. 1961; amd. Sec. 1, Ch. 175, L. 1969.

Amendments

The 1969 amendment rewrote the portion of this section relating to financial reports. For section prior to amendment, see parent volume.

CHAPTER 8—MILEAGE OF PUBLIC OFFICERS

Section 59-801. Mileage of all officers.

59-802. Same—liability of approving board for exceeding authorized amount.

59-801. (4884) Mileage of all officers. Members of the legislative assembly, state officers, township officers, jurors, witnesses, county agents, and all other persons, except sheriffs, who may be entitled to mileage, when using their own automobiles or airplanes in the performance of official duties, shall be entitled to collect mileage at a rate of nine cents (9¢) per mile for the distance actually traveled by automobile, and at the rate of twelve cents (12¢) per air mile for the distance actually traveled by airplane, and no more unless otherwise specifically provided by law; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.

History: En. Sec. 4590, Pol. C. 1895; re-en. Sec. 3111, Rev. C. 1907; re-en. Sec. 4884, R. C. M. 1921; amd. Sec. 1, Ch. 16, L. 1933; amd. Sec. 1, Ch. 121, L. 1941; amd. Sec. 1, Ch. 201, L. 1947; amd. Sec. 1, Ch. 93, L. 1949; amd. Sec. 1, Ch. 124, L. 1951; amd. Sec. 1, Ch. 106, L. 1961; amd. Sec. 1, Ch. 123, L. 1963; amd. Sec. 2, Ch. 48, L. 1967.

Amendments

The 1963 amendment inserted "or airplanes" following "when using their own automobiles"; and inserted "by automobile, and at the rate of twelve cents (12¢) per air mile for the distance actually traveled by airplane."

The 1967 amendment increased mileage allowance for the use of automobiles from 8¢ to 9¢ per mile.

59-802. (4884.1) Same—liability of approving board for exceeding authorized amount. Whenever it shall be necessary for any state or county officer or employee to use his own automobile or airplane in the performance of any official duty where traveling expense is allowed by law, such officer or employee, except sheriffs, shall receive nine cents (9¢) per mile for each mile necessarily traveled by automobile and twelve cents (12¢) per air mile for each mile necessarily traveled by airplane unless otherwise specifically provided by law and the members of any lawful approving board shall be liable upon their official bonds, for any claim which they may allow in excess of such amount; provided, however, that nothing herein contained shall be construed as affecting the validity of section 43-310.

History: En. Sec. 1, Ch. 80, L. 1923; amd. Sec. 3, Ch. 16, L. 1933; amd. Sec. 2, Ch. 121, L. 1941; amd. Sec. 2, Ch. 201, L. 1947; amd. Sec. 2, Ch. 93, L. 1949; amd. Sec. 2, Ch. 124, L. 1951; amd. Sec. 2, Ch. 106, L. 1961; amd. Sec. 2, Ch. 123, L. 1963; amd. Sec. 3, Ch. 48, L. 1967.

Amendments

The 1963 amendment inserted "or airplane" following "to use his own automobile"; inserted "by automobile and twelve cents (12¢) per air mile for each mile necessarily traveled by airplane"; and deleted a concluding sentence which read:

"Provided, further, that in no case shall an automobile be used as herein provided if suitable transportation can be had by railroad or bus."

The 1967 amendment increased mileage allowance for the use of automobiles from 8¢ to 9¢ per mile.

CHAPTER 10—VACATIONS OF EMPLOYEES

Section 59-1001. Annual vacation leave.

59-1002. Accumulation of leave.

59-1001. Annual vacation leave. (1) Each employee of the state, or any county or city thereof, who shall have been in continuous employment and service of the state, county or city thereof, for a period of one (1) year from the date of employment is entitled to and shall be granted annual vacation leave with full pay according to the following schedule:

(a) from one (1) year to ten (10) years of employment at the rate of one and one-quarter ($1\frac{1}{4}$) working days for each month of service;

(b) from ten (10) years to fifteen (15) years of employment at the rate of one and one-half ($1\frac{1}{2}$) working days for each month of service;

(c) from fifteen (15) years to twenty (20) years of employment at the rate of one and three-fourths ($1\frac{3}{4}$) working days for each month of service;

(d) after twenty (20) years of employment at the rate of two (2) working days for each month of service.

History: En. Sec. 1, Ch. 131, L. 1949; amd. Sec. 1, Ch. 152, L. 1951; amd. Sec. 1, Ch. 350, L. 1969.

section designation "(1)," substituted "according to the following schedule" for "at the rate of one and one-quarter ($1\frac{1}{4}$) working days for each month of service," and added subdivisions (a) to (d).

Amendments

The 1969 amendment inserted the sub-

59-1002. Accumulation of leave. Annual vacation leave may be accumulated to a total not to exceed thirty [30] working days.

History: En. Sec. 2, Ch. 131, L. 1949; amd. Sec. 2, Ch. 350, L. 1969.

Amendments

The 1969 amendment deleted "such" before "annual vacation leave."

59-1003. Separation from service or transfer to other department, etc.

History: En. Sec. 3, Ch. 131, L. 1949; amd. Sec. 3, Ch. 350, L. 1969.

tion but made no change therein and no reference was made to amendment of this section in the title of the act. For section, see parent volume.

Compiler's Notes

Laws 1969, Ch. 350 amended this sec-

59-1004. Leave of absence exceeding fifteen days, etc.

History: En. Sec. 4, Ch. 131, L. 1949; amd. Sec. 4, Ch. 350, L. 1969.

but made no change therein and no reference was made to amendment of this section in the title of the act. For section, see parent volume.

Compiler's Notes

Laws 1969, Ch. 350 amended this section

59-1005. Absence because of illness not chargeable against vacation.

History: En. Sec. 5, Ch. 131, L. 1949; amd. Sec. 5, Ch. 350, L. 1969.

Compiler's Notes

Laws 1969, Ch. 350 amended this section

but made no change therein and no reference was made to amendment of this section in the title of the act. For section, see parent volume.

Section 6 of Ch. 350, Laws 1969 read "Annual leave benefits heretofore accrued shall in no way be affected by the enactment of this act."

CHAPTER 11—FEDERAL SOCIAL SECURITY ACT—COVERAGE OF CERTAIN OFFICERS AND EMPLOYEES

- Section 59-1103.1. Contributions by state employees.
 59-1104. Plans for coverage of employees of political subdivisions.
 59-1105. Contribution account.
 59-1106. Costs of administration.
 59-1110. Eligibility of staff and teachers—payroll deductions.

59-1103.1. Contributions by state employees. (a) Every employee of the state whose services are covered by an agreement entered into under section 59-1103 shall be required to pay for the period of such coverage, contributions, with respect to wages (as defined in section 59-1102), equal to the amount of employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his entry upon such service, after the enactment of this act.

(b) and (c). * * * [Same as parent volume.]

History: En. as Sec. 5, Ch. 44, L. 1953 by Sec. 5, Ch. 270, L. 1955; amd. Sec. 198, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the phrase "into the contribution fund established by section 59-1105" after "of such coverage" in the first sentence in subd. (a).

59-1104. Plans for coverage of employees of political subdivisions. (a) and (b). * * * [Same as parent volume.]

(c)(1) Each political subdivision as to which a plan has been approved under this section shall pay with respect to wages (as defined in section 59-1102), at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under section 59-1102.1.

(2) Each political subdivision required to make payment under paragraph (1) of this subsection shall, in consideration of the employee's retention in, or entry upon, employment after enactment of this act, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in section 59-1102), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act, and to deduct the amount of such contributions from his wages as and when paid. Contributions so collected shall partially discharge the liability of such political subdivision or instrumentality under paragraph (1) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(d). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 44, L. 1953; amd. and redes. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963.

deleted the phrase "into the contribution fund" after "shall pay"; and, in the second sentence in subd. (c)(2), substituted "shall partially discharge the liability" for "shall be paid into the contribution fund in partial discharge of the liability."

Amendment

The 1963 amendment, in subd. (c)(1),

59-1105. Contribution account. (a) There is hereby established, in place of the fund known as the contribution fund, a contribution account in the agency fund. Such account shall consist of and there shall be deposited in such account:

(1) all contributions, interest and penalties collected under sections 59-1103.1 and 59-1104;

(2) all moneys appropriated thereto by the legislative assembly of the state of Montana; and

(3) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account and all other moneys received for the account from any other source. All moneys in the account shall be mingled and undivided. Subject to the provisions of this act, the state agency is vested with full power, authority and jurisdiction over the account, including all moneys and property or securities belonging thereto; it shall invest the same in investments of the same character as are permitted by section 79-1202 of this code for the investment of moneys in the long-term investment fund and shall credit all interest and income heretofore or hereafter earned thereon in excess of that which, in the judgment of the state agency, may be needed for the purposes set forth in subdivision (b) of this section, to the earmarked revenue fund or funds of the state agency, to be used by it either to defray the costs of administering the state agency, or for distribution pro rata to the contributing state departments, political subdivisions, school districts and instrumentalities, as it may determine, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this act.

(b) The contribution account shall be used and administered exclusively for the purpose of this act. Subject to the provisions of subdivision (a) of this section, withdrawals from such account shall be made for, and solely for (A) payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under section 59-1103; (B) payment of refunds provided for in section 59-1103.1; and (C) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(c) From the contribution account the custodian of the account shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 59-1102.1 and the Social Security Act.

(d) The treasurer of the state shall pay all warrants drawn upon the state agency in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

(e) Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the controller in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution account.

History: En. Sec. 5, Ch. 44, L. 1953; amd. and redes. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969.

Amendments

The 1963 amendment substituted "in place of the fund known as the contribution fund, a contribution account in the agency fund" for "a special fund to be known as the contribution fund" in the first sentence of subsection (a); substituted "account" for "fund" throughout the section; deleted the words "shall be established and held separate and apart from any other funds or moneys of the state and" which preceded "shall be used" in the first sentence of subsection (b); deleted the words "shall be ex officio treasurer and custodian of the contribution fund and shall administer such fund in accordance with the provisions of this act and the directions of the state agency and" which followed "The treasurer of the state" at the beginning of subsection (d); and substituted "the state agency"

for "it" after "warrants drawn upon" in subsection (d).

The 1967 amendment deleted former subdivisions (3) and (4) of subsection (a), which read, "(3) any property or securities and earnings thereof acquired through the use of moneys belonging to the account; (4) interest earned upon any moneys in the account; and "; renumbered the former subdivision (5) as new subdivision (3); inserted the passage "it shall invest the same * * * as it may determine" after "thereto" in new subdivision (3); and inserted "subject to the provisions of subdivision (a) of this section" after "of this act" in subsection (b).

The 1969 amendment substituted "funds of the state agency" for "social security division account" after "earmarked revenue fund" and "the state agency" for "this chapter" after "costs of administering" in the last sentence of subsection (a).

Effective Date

Section 2 of Ch. 124, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 26, 1969.

59-1106. Costs of administration. All costs allocable to the administration of this chapter shall be charged to the earmarked revenue fund, social security division account, and so much of such costs as are not defrayed by interest and income earned upon the contributions fund which has been credited to said earmarked revenue fund, social security division account, as provided in section 59-1105, shall be paid to the state agency for deposit to the earmarked revenue fund, social security division account by each department of the state and by the participating divisions and instrumentalities and political subdivisions of the state pro rata according to their respective contributions.

History: En. Sec. 6, Ch. 44, L. 1953; amd. and redes. as Sec. 8, Ch. 44, L. 1953 by Sec. 8, Ch. 270, L. 1955; amd. Sec. 5, Ch. 248, L. 1965; amd. Sec. 2, Ch. 109, L. 1967.

Amendments

The 1965 amendment substituted "the earmarked revenue fund, social security division account" for "the general fund" after "paid to."

The 1967 amendment deleted "and paid to" after "charged to," and added "and so much of such costs * * * security divi-

sion account" before "by each department."

Repealing Clause

Section 3 of Ch. 109, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 109, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 21, 1967.

59-1110. Eligibility of staff and teachers—payroll deductions. Pursuant to such certification, the staff and teachers of any such district shall be eligible for coverage under the provisions of the Federal Social Security Act, and the fiscal officer of such district shall thereafter collect the contributions required under the Federal Social Security Act, section 218, by payroll deduction from the staff and teachers and from the school district as employer; and said funds and accounts shall be deposited with the state board of equalization, or such other agency as may be designated by the legislature to administer Social Security Act coverage in this state, and held in the contributions' fund as provided by sections 59-1101 to 59-1108. For the purposes of this act, the contributions with respect to services, equivalent to the employer's tax established by the Federal Social Security Act shall be the first obligation against any state funds received for school support by any school district, high school district or county high school, and shall first be paid therefrom.

History: En. Sec. 2, Ch. 271, L. 1955;
amd. Sec. 1, Ch. 253, L. 1965.

Amendment

The 1965 amendment added the last sentence.

CHAPTER 12—PERSONNEL ADMINISTRATION LAW

(Repealed—Section 9, Chapter 3, Ex. Laws of 1967)

59-1201 to 59-1215. Repealed.

Repeal

These sections (Secs. 1 to 15, Ch. 251, L. 1953), the Personnel Administration Law, were repealed by Sec. 9, Ch. 3, Ex. Laws 1967.

Study of Personnel Administration

Sections 1 to 8, Ch. 3, Laws of 1967 (Ex. S.) provided for a detailed study of personnel administration, as follows:

"Section 1. The budget director is hereby directed and authorized to enter into and make the necessary agreements and/or contracts in the name of the state of Montana, subject to the approval of the governor, with a firm, partnership, corporation or other association knowledgeable in the field of personnel administration for the purpose of preparing, after a detailed study, an effective plan for the classification of employees and the development of an equitable salary schedule.

"Section 2. Under the direction of the budget director, the firm selected to make the study will contact the heads of all agencies, departments, and institutions concerned and prepare a classification plan for all positions, grouping together under common title those positions having approximately the same duties and responsibilities and the same requirements of training and experience. The specifications for each class of positions shall include a title, a description of duties and responsibilities, the minimum require-

ments of education and experience and all other necessary qualifications.

"Section 3. The study shall provide for all position classifications a compensation plan based on the amount of money available, the cost of living and the prevailing rates of pay in government and private employment in the locality of the agency, department or institution. The compensation plan will provide for initial, intermediate and maximum rates of pay for all position classifications.

"Section 4. The classification of positions to which this act applies will include all positions in all state agencies, departments and institutions except:

"(1) Officers and employees of the legislative branch;

"(2) State officers elected by popular vote and persons appointed to fill vacancies in such elective offices;

"(3) Members of boards and commissions appointed by the governor or legislature;

"(4) The agency head, one (1) principal assistant or deputy and one (1) private secretary for each state agency;

"(5) Judges of the judicial branch;

"(6) Attorneys admitted to practice before the supreme court of Montana and serving as legal counsel;

"(7) Research and teaching personnel, officers, and student employees of a unit of the Montana university system;

"(8) Persons employed in a professional or scientific capacity to make or conduct a temporary and special investigation or examination on behalf of the governor, the legislature or a legislative committee;

"(9) Officers or members of the militia.

"Section 5. All state agencies, departments and institutions are hereby directed to assist and co-operate with the budget director and the contracted firm in the preparation of the study as defined in this act.

"Section 6. The budget director shall have the authority to employ such clerical and other employees deemed necessary to properly administer this act.

"Section 7. The governor shall include in his budget recommendations to the forty-first legislative assembly appropriation requests sufficient to finance the compensation plan.

"Section 8. There is appropriated from the general fund to the budget director ninety-nine thousand five hundred dollars (\$99,500) for the biennium ending June 30, 1969, for the purpose specified in this act. In addition, there is hereby appropriated all federal and private moneys that may become available for the purpose specified in this act."

CHAPTER 13—FACSIMILE SIGNATURES OF PUBLIC OFFICIALS

59-1301. Definitions.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have

adopted the Uniform Facsimile Signatures of Public Officials Act: Florida and Nevada.

TITLE 60—OIL AND GAS

- Chapter 1. Conservation of oil and gas—commission, 60-125, 60-127, 60-131.1 to 60-131.13, 60-145, 60-147.
2. Petroleum products—standards—regulation of manufacture and distribution, 60-223 to 60-233.

CHAPTER 1—CONSERVATION OF OIL AND GAS—COMMISSION

- Section 60-125. Oil and gas conservation commission—members—term—oath—seal—employees.
60-127. Powers and duties of commission.
60-131.1. Operation of pool as unit—commission to hold hearing—notice.
60-131.2. Commission order—criteria.
60-131.3. Terms and conditions of order—requirements.
60-131.4. Plan for unit operations—approval by those paying costs required—conditions for approval.
60-131.5. Amendment of commission order—conditions.
60-131.6. Units established by previous order may be included—manner of inclusion.
60-131.7. Unit operations on less than whole of pool.
60-131.8. Presumptions—compliance with commission order constitutes fulfillment of lease or contract obligations.
60-131.9. Property rights—operator's lien—perfection of lien.
60-131.10. Contract relating to tract not terminated by commission order.
60-131.11. Title to oil and gas rights not affected by commission order—allocation of property.
60-131.12. Trade not restrained by unit operations.
60-131.13. Presumption of partnership not created by unit operation.
60-145. Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation moneys.
60-147. Transfer of jurisdiction and record.

60-124. Waste of oil and gas prohibited.

Private Rights

It is the very essence of conservation that private rights be respected, so that in laying down well spacing regulations under section 60-129, subsection (C), the

correlative rights of fringe owners must also be considered by the oil and gas conservation commission. *Pattie v. Oil & Gas Conservation Commission*, 145 M 531, 402 P 2d 596.

60-125. Oil and gas conservation commission—members—term—oath—seal—employees. A to D. * * * [Same as parent volume.]

E. The commission shall have a seal with the words engraved thereon: "Oil and Gas Conservation Commission of Montana," and such seal shall be affixed to all writs, authentication of records or other official proceedings of the commission. The courts of this state shall take judicial notice of such seal.

F. The commission shall appoint an executive secretary and may employ such other persons as experts, geologists, petroleum engineers, attorneys, assistants, field supervisors, clerks and stenographers and may acquire such personal property as may be necessary to perform the duties that may be required of it, and fix the compensation of the executive secretary and employees. Each member of the commission shall receive, as compensation for his services, the sum of twenty dollars (\$20) per day for each day actually engaged in the performance of the duties

of his office, including time of travel between his home and the place at which he performs such duties, together with transportation and per diem expenses as provided by law in the discharge of said duties; provided, however, that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of section 60-145, plus any amount appropriated for that purpose, or otherwise accruing to said fund.

History: En. Sec. 2, Ch. 238, L. 1953; amd. Sec. 1, Ch. 11, L. 1955; amd. Sec. 1, Ch. 196, L. 1969.

before "take judicial notice" in subsection E and, in subsection F, increased the compensation of commission members from \$15 to \$20 per day.

Amendments

The 1969 amendment inserted "shall"

60-127. Powers and duties of commission. A and B. * * * [Same as parent volume.]

C. The commission has authority, and it is its duty:

(1) to (5). * * * [Same as parent volume.]

(6) To report as provided in section 2 [82-4002] of this act.

D and E. * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 238, L. 1953; amd. Sec. 16, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the reference to the reporting requirements of section 82-4002 for provisions relating to specific contents of reports required to be made to the legislative assembly in subdivision C (6).

Correlative Rights

Under section 60-129, subsection (C), the oil and gas conservation commission

has the authority and duty to consider correlative rights and private interests in making regulatory orders establishing spacing units with respect to fringe owners, but it does not have the authority to adjudicate disputes involving those rights. *Pattie v. Oil & Gas Conservation Commission*, 145 M 531, 402 P 2d 596.

References

Cited in *Yoder v. Assiniboine & Sioux Tribes of Fort Peck Indian Reservation*, 339 F 2d 360, 361.

60-129. Well spacing units—orders.

Adjacent Landowners

Where the landowners lie on the projected edge of a petroleum reservoir, subsection (C) of this section clearly indicates that an exception may be granted where the requirement to drill the well at the authorized location on the spacing units would be inequitable or unreasonable. *Pattie v. Oil & Gas Conservation Commission*, 145 M 531, 402 P 2d 596.

Factors Governing Grant of Exception

Under statute authorizing commission to grant exceptions to field spacing rules, commission must hear evidence on issue of injury to correlative rights of adjoining landowners and determine if there are

grounds for exercise of its authority to limit production of exception location well even in absence of showing of waste. *Chevron Oil Co. v. Oil & Gas Conservation Commission*, 150 M 351, 435 P 2d 781.

Private Rights

Subsection (C) of this section is sufficiently broad to permit the oil and gas conservation commission to consider private rights in making orders. *Pattie v. Oil & Gas Conservation Commission*, 145 M 531, 402 P 2d 596.

References

Cited in *Yoder v. Assiniboine & Sioux Tribes of Fort Peck Indian Reservation*, 339 F 2d 360, 361.

60-130. Pooling of interest within spacing unit, etc.

Indian Lands

In suit in federal court by Indian tribes to restrain the Montana oil and gas conservation commission from enforcing an

order "pooling" lands owned by the Indian tribes with lands of another to form a "spacing unit," the matter in controversy was not the lands or the royalties,

but the regulation and the right to be free from it, and evidence adduced by the Indian tribes, which did not show facts supporting determination that lands or expected royalties exceeded \$10,000, failed

to show jurisdictional amount in controversy. *Yoder v. Assiniboine & Sioux Tribes of Fort Peck Indian Reservation*, 339 F 2d 360, 363.

60-131. Agreements for development and operation of pool, etc.

References

Pattie v. Oil & Gas Conservation Commission, 145 M 531, 402 P 2d 596.

60-131.1. Operation of pool as unit—commission to hold hearing—notice. The commission, upon the application of persons owning leasehold interests underlying [sixty per cent] (60%) of the surface within the delineated area, shall hold a hearing to consider the need for the operation as a unit, for pressure maintenance or secondary recovery purposes, of one or more pools or parts thereof in a field.

(1) At least sixty (60) days prior to application, the applicant shall, by registered or certified mail, notify all known persons owning an interest in the oil and gas within the proposed unit area as disclosed by the records of the county or counties in which the proposed unit area is situated, at such persons' last known address, of applicant's intention to make such application. At the same time producers will be furnished with a plan of unit operations. Upon written request of any operator of any lease which is in whole or in part within the confines of the proposed delineated area, applicant will furnish such operator with copies of any exhibits to be submitted to the commission at the time of hearing.

History: En. Sec. 1, Ch. 33, L. 1969.

Title of Act

An act to amend Title 60, chapter 1, Revised Codes of Montana, 1947, by adding an act empowering the oil and gas conservation commission of the state of Montana upon application, to determine the need for and to make orders providing

for the operation as a unit of one or more pools or parts thereof in a field; providing what any such order shall include; providing that no order shall be effective except after approval by 80% of the parties involved within six months; and providing for the amendment of orders made; providing an effective date.

60-131.2. Commission order—criteria. The commission shall make an order providing for the unit operation of a pool or pools or part thereof if it determines, based on evidence presented at such hearing, that:

(1) Such operation is reasonably necessary to increase the ultimate recovery of oil or gas; and

(2) The value of the estimated additional recovery of oil or gas less royalties exceeds the estimated additional cost incident to conducting such operations; and

(3) The full areal extent of such pool or pools or part thereof has been reasonably defined and determined by drilling operations.

History: En. Sec. 2, Ch. 33, L. 1969.

60-131.3. Terms and conditions of order—requirements. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(1) A description of the pool or pools or parts thereof to be so operated, termed the unit area, but only so much of a pool as has rea-

sonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area.

(2) A statement of the nature and purpose of the plan and operations contemplated, together with a copy of the proposed unit agreement and unit operating agreement.

(3) A plan for allocating to each tract in the unit area its fair share of the oil and gas produced from the unit area and not required or consumed in the conduct of the operation of the unit area or unavoidably lost. No such plan shall be approved by the commission until the commission has considered the relative value that such share of production bears to the relative value of all of the separately owned tracts in the unit area, exclusive of physical equipment utilized in unit operations. In so considering such relative value, the commission shall weigh the economic value of the gas to all persons affected as compared to the economic value of the oil to all persons affected.

(4) A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations.

(5) A provision providing how the costs of unit operations, including overhead and capital investments, shall be determined and charged to the separately owned tracts, including a provision for carrying or otherwise financing any owner who has not executed the proposed unit operating agreement and who elects to be carried or otherwise financed, allowing an interest charge of the then current prime rate plus two per cent (2%) for such service. Recovery of the money advanced, plus interest, shall be limited to, and only shall be recoverable from, such owners' share of production. Such recovery shall be as follows:

(a) During the period of depletion of the remaining estimated primary reserves from the unit, only from the production that is in excess of such owners' average actual rate of production during the eighteen (18) months immediately preceding the effective date of the unit. For purposes of this subsection, the term "primary reserves" means the oil or gas which would be produced from the unitized pool or pools as a result of the natural energy therein and without the introduction or a secondary recovery program.

(b) During the period subsequent to the depletion of the remaining estimated primary reserves from the unit, from one hundred per cent (100%) of such owners' share of production.

(6) A provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of such owner.

(7) A provision whereby the unit operator, after having operated for a minimum period of two years, can be challenged by any other owner in the unit, and such challenging owner may succeed to the unit operations upon a showing that (a) he can operate more efficiently and economically than the present operator; (b) he is qualified and finan-

cially responsible; (c) a majority of the other owners, both in number and in percentage and exclusive of the challenged operator, approve such challenging owner becoming unit operator; and (d) the challenged operator does not initiate the conditions of operations of the challenging owner within sixty (60) days of the challenged operator's receipt of such conditions of operations.

(8) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate; and

(9) Such additional provisions that are found to be appropriate for carrying on unit operations and for the protection and adjustment of correlative rights.

History: En. Sec. 3, Ch. 33, L. 1969.

60-131.4. Plan for unit operations—approval by those paying costs required—conditions for approval. No order of the commission providing for unit operations shall become effective unless and until the plan for unit operations prescribed by the commission has been approved in writing by those persons who, under the commission's order, will be required to pay at least eighty per cent (80%) of the costs of the unit operations, and also by the persons owning at least eighty per cent (80%) of the production or proceeds thereof that will be credited to interests which are free of cost, such as royalties, overriding royalties, and production payments, and the commission has made such a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved; provided, however, that if one owner who is obligated to pay costs of the unit operation owns eighty per cent (80%) or more, but less than one hundred per cent (100%), the approval of that owner and at least one other such owner shall be required, and if one person entitled to production or proceeds thereof that will be credited to interests which are free of costs, owns eighty per cent (80%) or more, but less than one hundred per cent (100%), the approval of that person and at least one other such person shall be required. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the commission shall, upon application and notice, hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the requisite number of owners and persons and the requisite percentage of interests in the unit area do not approve the plan for unit operations within a period of six (6) months from the date on which the order providing for unit operations is made, such order shall be revoked by the commission unless for good cause shown the commission extends said time.

History: En. Sec. 4, Ch. 33, L. 1969.

60-131.5. Amendment of commission order—conditions. An order providing for unit operations may be amended by an order made by the commission in the same manner and subject to the same conditions and notice as an original order providing for unit operations, provided

(a) if such an amendment affects only the rights and interests of the owners the approval of the amendment by the persons owning interest which are free of costs, such as royalties, overriding royalties and production payments, shall not be required, and (b) no such order of amendment shall change the percentage for the allocation of oil and gas as established for any tract by the original order, except with the consent of all persons owning oil and gas rights in such tract, or change the percentage for the allocation of cost as established for any tract by the original order, except with the consent of all owners in such tract.

History: En. Sec. 5, Ch. 33, L. 1969.

60-131.6. Units established by previous order may be included—manner of inclusion. The commission, by an order, may provide for the unit operation of a pool or pools or parts thereof that embrace a unit established by an order of the commission made subsequent to the effective date of this amendment to Title 60, chapter 1, Revised Codes of Montana. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production so allocated thereto shall then be allocated among the tracts included in such previously established unit area in the same proportions as those specified in the previous order. Any new owner whose interest by such order is added to the unit area and who becomes liable for his proportionate share of the costs of unit operations will not be liable for any unit operating costs incurred prior to such person's entry in the unit. At the time such interest is included in the unit, an equipment inventory will be made in order to charge such newly committed interest with its proportionate share of capital investment at its then value. An oil-in-storage inventory will be taken immediately prior to adding the newly committed interest.

History: En. Sec. 6, Ch. 33, L. 1969.

Compiler's Notes

The effective date of this act was February 13, 1969.

60-131.7. Unit operations on less than whole of pool. An order may provide for unit operations on less than the whole of a pool where the unit area is of such size and shape as may be reasonably required for that purpose, and the conduct thereof will have no adverse effect upon other portions of the pool.

History: En. Sec. 7, Ch. 33, L. 1969.

60-131.8. Presumptions—compliance with commission order constitutes fulfillment of lease or contract obligations. All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each tract in the unit area by the several owners thereof. The portion of the unit production allocated to a tract in a unit area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon. Operations conducted pursuant to an order of the commission providing

for unit operations shall constitute a fulfillment of all the express or implied obligations of each lease or contract covering lands in the unit area to the extent that such obligations cannot be performed because of the order of the commission.

History: En. Sec. 8, Ch. 33, L. 1969.

60-131.9. Property rights—operator's lien—perfection of lien. That portion of the unit production allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations, except that the operator of the unit shall, subject to section 3, subsection 5 (a) [60-131.3, subdivision (5) (a)], have a first and prior lien upon each owner's oil and gas rights and his share of unitized production to secure the payment of such owner's proportionate part of developing and operating the unit area, Such lien may be perfected and enforced in the same manner as provided in Title 45, chapter 5, Revised Codes of Montana, 1947, as amended.

History: En. Sec. 9, Ch. 33, L. 1969.

60-131.10. Contract relating to tract not terminated by commission order. No division order or other contract relating to the sale or purchase or production from a tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

History: En. Sec. 10, Ch. 33, L. 1969.

60-131.11. Title to oil and gas rights not affected by commission order—allocation of property. Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area, and shall be the property of such owners in the proportion that the expenses of unit operations are charged.

History: En. Sec. 11, Ch. 33, L. 1969.

60-131.12. Trade not restrained by unit operations. The formation of such a unit as herein provided and the operation of the unit under order of the commission shall not be in violation of any statute of this state relating to trusts, monopolies, contracts or combinations in restraint of trade.

History: En. Sec. 12, Ch. 33, L. 1969.

60-131.13. Presumption of partnership not created by unit operation. The formation of such a unit as herein provided will not create a relationship between the parties thereto which shall be deemed to be

or constitute a joint endeavor, adventure, undertaking, association or mining or other partnership.

History: En. Sec. 13, Ch. 33, L. 1969.

Effective Date

Section 14 of Ch. 33, Laws 1969 pro-

vided the act should be in effect from and after its passage and approval. Approved February 13, 1969.

60-134. Rehearing.

References

Pattie v. Oil & Gas Conservation Commission, 145 M 531, 402 P 2d 596.

60-135. Court review of order of commission by suit for injunction, etc.

* * *

D. An appeal to the supreme court may be taken from any final judgment, decree or order in any such action, as provided in chapter 80 of Title 93, Revised Codes of Montana, 1947.

Compiler's Notes

Subsection D is reprinted to correct an error in the parent volume.

References

Pattie v. Oil & Gas Conservation Commission, 145 M 531, 402 P 2d 596.

60-139. Repealed.

Repeal

This section (Sec. 16, Ch. 238, L. 1953), relating to property and records of the

former oil conservation board and of the board of railroad commissioners, was repealed by Sec. 242, Ch. 147, Laws 1963.

60-145. Privilege and license tax, quarterly statements, penalties—drilling permit fees—oil and gas conservation moneys. A to C. * * *
[Same as parent volume.]

D. All money collected under the provisions of this act shall be deposited in the earmarked revenue fund by the state treasurer of the state of Montana, and shall be used for the purpose of paying all expenses of said commission and for no other purpose; all such moneys shall be used by said commission subject to the approval of the controller and biennial appropriations by the legislative assembly. Upon the termination of said commission any such money remaining shall be paid over to the general fund of the state. All accounts and expenditures of said commission shall be certified by the commission, approved as provided by law, and paid by the state treasurer.

E. The commission may appoint a secretary and employ such other persons as experts, assistants, clerks, and stenographers, as may be deemed necessary to perform the duties that may be required of it, and fix their compensation; provided, however, that the total expenditures of such commission shall not exceed in the aggregate during any fiscal year, the amount actually collected under the provisions of subsection A. of this section, above, plus any amount appropriated for that purpose. The members of the commission shall be allowed their several expenses incurred in the discharge of their duties, as is elsewhere provided in this act.

History: En. Sec. 22, Ch. 238, L. 1953; Ch. 198, L. 1957; amd. Sec. 1, Ch. 47, L. amd. Sec. 1, Ch. 234, L. 1955; amd. Sec. 1, 1961; amd. Sec. 160, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" in the first sentence of subsection D for "a special fund to be known as the 'Oil and Gas Conservation Fund'"; deleted the words "the fund to be raised" which preceded "shall be used for the purpose" in the first sentence of subsection D; substituted "such moneys" for "moneys from this fund" in the final clause of the first sentence of

subsection D; substituted "such money remaining" for "balance remaining in said fund" in the second sentence of subsection D; deleted the words "upon warrants drawn by the state auditor out of the oil and gas conservation fund" from the end of subsection D; and deleted the words "or otherwise accruing to said fund" from the end of the first sentence of subsection E.

60-147. Transfer of jurisdiction and record. On or before the effective date, as hereinafter provided, all jurisdiction, control, supervision, custody, property and records of the said station shall be and become transferred from the jurisdiction of the bureau to the commission, and the said commission shall, after the effective date hereinafter provided, assume the said jurisdiction, control, supervision and custody of all property, real and personal, and records located at or pertaining to the said station; that the property so transferred shall be and become the property of the commission; that the operation and maintenance of the said station shall be done and performed by the commission from and after the said effective date hereinafter provided, and the necessary expenditures therefor shall be paid from oil and gas conservation commission moneys, in the earmarked revenue fund upon proper vouchers, by the state treasurer; that the said transfer of property, real, personal, or mixed, and the records from the bureau to the commission shall be made without lien, encumbrance, or obligation of any sort, upon said property and records, and it is the express intention hereby to transfer said property and records to the commission free and clear.

History: En. Sec. 2, Ch. 32, L. 1957;
amd. Sec. 161, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "oil and gas conservation commission moneys, in the earmarked revenue fund" for "oil and gas conservation commission fund."

CHAPTER 2—PETROLEUM PRODUCTS—STANDARDS—REGULATION OF MANUFACTURE AND DISTRIBUTION

- Section 60-223. Petroleum products dealers—definition of terms.
60-224. License required as a condition precedent to the right to do business.
60-225. Place of business license.
60-226. Pump license fees.
60-227. Petroleum and liquefied petroleum meter license fees.
60-228. Petroleum and liquefied petroleum vehicle tank license fees.
60-229. Dispensation of petroleum products.
60-230. Dispensation of liquefied products.
60-231. Temperature correction of liquefied petroleum to sixty degrees (60°)
Fahrenheit when sold to a consumer.
60-232. Rules, regulations and standards.
60-233. Penalty for violation of this act.

60-201, 60-202. (3913.1, 3913.2) Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 109, L. 1927; Secs. 2, 3, Ch. 131, L. 1955; Secs. 1, 2, Ch. 96, L. 1957; Sec. 1, Ch. 146, L. 1961; Sec. 1, Ch. 220, L. 1961), relating to

the licensing of petroleum products dealers, were repealed by Sec. 14, Ch. 153, Laws 1965. For present law, see secs. 60-223 to 60-233.

60-223. Petroleum products dealers—definition of terms. Meaning of terms when used in this act: (1) The terms “state sealer” and “deputy sealer” mean, respectively, the commissioner of agriculture of the state of Montana and his deputy sealers of weights and measures of the state of Montana.

(2) The words “sell” and “sale” shall also mean barter and exchange.

(3) The term “dealer” means all persons, firms, copartnerships, corporations, trusts or agencies.

(4) A petroleum dealer is a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer, or in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale within the state of Montana any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil and greases, or any oil or gas or oil and gas product, except as otherwise defined as a liquefied petroleum dealer in subsection five (5).

(5) A liquefied petroleum dealer is a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer, or in the business of selling or offering or advertising for sale or in the business of refining or manufacturing or keeping for sale within the state of Montana any petroleum product composed predominately of any of the following hydrocarbons, or mixtures thereof: Propane, propylene, butanes (normal butane or isobutane), and butylenes.

History: En. Sec. 1, Ch. 153, L. 1965.

Title of Act

An act to provide for the licensing and regulation of all petroleum dealers and liquefied petroleum dealers who sell or offer to sell to a consumer and the

licensing of any device and the regulation of its use when used for the purpose of delivering or distributing such products as are sold or offered for sale by such dealers; repealing sections 60-201 and 60-202, R. C. M. 1947.

60-224. License required as a condition precedent to the right to do business. It shall be a violation of this act for any petroleum dealer or liquefied petroleum dealer to do business in the state of Montana until a nontransferable license has been issued to said dealer by the state sealer. Such license shall be obtained by the dealer by making application to the state sealer upon such blank forms as may be provided by the state sealer for the right to do business in the state of Montana, and after the application has been made and filed the license, without fee, shall be issued. Any dealer who has not applied for and been issued a license for the right to do business in the state of Montana by the state sealer and who is found selling or offering for sale or delivering or distributing to a consumer shall, upon conviction, be fined as provided by this act, and any vehicle tank, or vehicle tank and meter, or any other measuring device used by said dealer for such delivery or distribution may be confiscated and seized as evidence by the state sealer or his deputy sealers. The state sealer or his deputy sealers shall not be liable to the owner or any other persons, firms, copartnerships, corporations, trusts or agencies for damages, directly or indirectly, caused by or resulting from such seizure.

History: En. Sec. 2, Ch. 153, L. 1965.

60-225. Place of business license. Each petroleum dealer or liquefied petroleum dealer shall pay a license fee of two dollars (\$2) for each place

of business, but the fee may be deducted from any weight or measuring device test fee or license fee required by this act, or any other act, relating to weights and measures.

History: En. Sec. 3, Ch. 153, L. 1965.

60-226. Pump license fees. Each petroleum dealer shall pay a license fee of two dollars (\$2) for each gasoline pump, diesel pump or fuel oil pump measuring device.

History: En. Sec. 4, Ch. 153, L. 1965.

60-227. Petroleum and liquefied petroleum meter license fees. All petroleum vehicle tank meters and bulk petroleum meters of two and one-half ($2\frac{1}{2}$) inches and under, six dollars (\$6). All two and one-half ($2\frac{1}{2}$) inch and under petroleum meters for more than one fluid, ten dollars (\$10). All bulk petroleum meters over two and one-half ($2\frac{1}{2}$) inch, ten dollars (\$10). All petroleum meters over two and one-half ($2\frac{1}{2}$) inch for more than one fluid, fifteen dollars (\$15). All liquefied petroleum liquid meters fifteen dollars (\$15).

History: En. Sec. 5, Ch. 153, L. 1965.

60-228. Petroleum and liquefied petroleum vehicle tank license fees. The license fee for all petroleum or liquefied petroleum vehicle tanks without meters used for distribution of such products shall be as follows: Up to and including two hundred (200) gallons, eight dollars (\$8); over two hundred (200) and including three hundred (300) gallons, ten dollars (\$10); over three hundred (300) and including five hundred (500) gallons, twelve dollars (\$12); over five hundred (500) and including one thousand (1,000) gallons, sixteen dollars (\$16); over one thousand (1,000) and including two thousand (2,000) gallons, twenty dollars (\$20); for each additional one thousand (1,000) gallons over two thousand (2,000) gallons, four dollars (\$4).

All licenses shall be annual and nontransferable and shall expire December 31. There shall be an additional charge of fifty per cent (50%) on all license fees, required by this act, that are not paid before March 1 of each year, where the vehicle tank, or meter, or measuring device is in use. If such fee is not paid the equipment shall be sealed and removed from service, by the state sealer or his deputy sealers, and it shall be a violation of this act for anyone to use the device or break the seal until all such fees have been paid.

History: En. Sec. 6, Ch. 153, L. 1965.

60-229. Dispensation of petroleum products. It shall be unlawful to make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the state sealer or his deputy sealers. Part of a compartment delivery can only be made by an approved, calibrated and sealed meter or an approved can. Gauge stick measurement will not be permitted. All tank markers must be positioned and sealed as provided by the state sealer. The state sealer shall, by proper regulation, fix fees for retesting meters or measuring devices or vehicle tanks used for distribution to a

consumer by petroleum or liquefied petroleum dealers, and for any other special service rendered.

History: En. Sec. 7, Ch. 153, L. 1965.

60-230. Dispensation of liquefied products. It shall be unlawful to sell or deliver liquefied petroleum to a consumer, as a liquid, except as provided by this act. Full compartment sales or deliveries may only be made in a manner that shall be provided by the state sealer. All other sales or deliveries may only be made through a meter which has been approved, calibrated and sealed by the state sealer or his deputy sealers; or by weight, unless otherwise provided by the state sealer.

History: En. Sec. 8, Ch. 153, L. 1965.

60-231. Temperature correction of liquefied petroleum to sixty degrees (60°) Fahrenheit when sold to a consumer. It shall be a violation of this act to sell or offer for sale or deliver liquefied petroleum to a consumer, as a liquid or by liquid measurement, the measurement of which has not been temperature corrected to sixty degrees (60°) Fahrenheit, unless otherwise provided by the state sealer. Temperature correction shall only be made by means of an automatic compensating device which has been approved, calibrated, and sealed by the state sealer or his deputy sealers; or by weight as provided by the state sealer.

History: En. Sec. 9, Ch. 153, L. 1965.

60-232. Rules, regulations and standards. The state sealer is hereby authorized to promulgate and adopt such rules, regulations and standards as he shall deem necessary for the administration and enforcement of this act.

History: En. Sec. 10, Ch. 153, L. 1965.

60-233. Penalty for violation of this act. Any dealer who by himself or by his servant or agent, or as the servant or agent of another person, violates any provision of this act or any rule or regulation adopted hereunder shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than twenty-five (\$25) nor more than one hundred (\$100) dollars for each violation.

History: En. Sec. 11, Ch. 153, L. 1965.

Saving Clause

Section 12 of Ch. 153, Laws 1965 read "Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act."

Separability Clause

Section 13 of Ch. 153, Laws 1965 read "Severability clause. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain

in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 14 of Ch. 153, Laws 1965 read "Repealing clause. Section 60-201 and 60-202, R. C. M. 1947, are repealed."

Effective Date

Section 15 of Ch. 153, Laws 1965 read "Effective date. This act is effective January 1, 1966."

CHAPTER 8—UNDERGROUND GAS STORAGE RESERVOIRS

60-804. Certificate of commission, etc.

Compiler's Notes

Section 93-3001, contained in Chapter 30, Title 93 referred to in this section in the parent volume, was repealed by Sec. 1, Ch. 6, Laws 1963; section 93-3002 was superseded by M. R. Civ. P., Rule 41(e); sections 93-3003, 93-3006, 93-3007, 93-3013 to 93-3015, 93-3017 and 93-3018 were re-

pealed by Sec. 84, Ch. 13, Laws 1961; section 93-3004 was repealed by Sec. 1, Ch. 5 and Sec. 2, Ch. 189, Laws 1963; sections 93-3009, 93-3010 and 93-3019 were repealed by Sec. 2, Ch. 189, Laws 1963; and sections 93-3008, 93-3011 and 93-3012 were superseded by M. R. Civ. P., Rule 4D, as amended by Sup. Ct. Ord. 10750.

TITLE 61—PARENT AND CHILD

Chapter 2. Adoption, 61-211, 61-212.

CHAPTER 1—PARENT AND CHILD—CHILDREN BY BIRTH AND BY ADOPTION

61-105. (5834) Custody of legitimate child.

Basis for Preference

District court did not abuse its discretion in awarding custody of two younger children to father, who had moved to California, since children had a good home with their father and paternal grand-

parents, were well cared for and happy, were given more than adequate educational and religious training and had lived with their father for more than five years. *Anderson v. Anderson*, 145 M 244, 400 P 2d 632.

CHAPTER 2—ADOPTION

Section 61-211. Interlocutory and final decree.
61-212. Effect of final decree.

61-203. Who may adopt.

Res Judicata

Where the mother, of a child born out of wedlock, joined in and agreed to a petition allowing the natural father and his wife to adopt the child, the proceedings and resulting decree were res ad-

judicata and the mother of the child could not later attack the decree on the grounds that the father did not fit specifically any of the categories provided by this section. In re Adoption of Curtis, 143 M 330, 390 P 2d 209.

61-204. Venue.

Jurisdiction

This section relates to venue and not jurisdiction, and even though only one of joint petitioners in an adoption proceed-

ing was a resident of the county in which the proceeding was held, this was sufficient to confer jurisdiction. In re Adoption of Curtis, 143 M 330, 390 P 2d 209.

61-205. Persons required to consent to the adoption.

Estoppel

Where the mother, of a child born out of wedlock, joined in and agreed to a petition allowing the natural father and his wife to adopt the child, the mother

of the child was estopped from attacking the resulting decree of adoption two years later. In re Adoption of Curtis, 143 M 330, 390 P 2d 209.

61-211. Interlocutory and final decree. Upon examination of the report described in section 61-209, if such report has been deemed necessary by said court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner:

The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court, directing such parent or parents to appear in court at a time to be fixed by the

court, and show cause why said petition should not be granted. Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of said citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P. If after completion of such service, any parent so served does not appear, the court may act upon the petition, and the order of the court thereon shall be binding upon all persons so served; provided that any such person shall have the right to appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

The petitioners and the child shall appear at said hearing, unless the presence of the child is waived by the court.

Service of process, as aforesaid, need not be made on a parent who has consented in writing to an adoption; or on the father of an illegitimate child; or on any parent whose consent to adoption is not required under the provisions of section 61-205; and service of process shall not be made on any parent who has relinquished his child to the state department of public welfare or an adoption agency licensed by the state department of public welfare.

After an interlocutory decree, as aforesaid, has been issued by the court, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within six (6) months on any circumstances or conditions which may have a bearing on the adoption. After six (6) months from the date of the interlocutory decree, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on the state department of public welfare, and the investigator, if any. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of said child.

History: En. Sec. 11, Ch. 240, L. 1957; amd. Sec. 4, Ch. 199, L. 1961; amd. Sec. 1, Ch. 2, L. 1963.

in the third paragraph, substituted the reference to Rule 4 of the Montana Rules of Civil Procedure for a reference to former section 93-3014.

Amendment

The 1963 amendment corrected a typographical error in the first paragraph and,

61-212. Effect of final decree. (1) After the final decree of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents. From the

date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents and the kindred of the adoptive parents in accordance with the statutes of descent and distribution, and the adoptive parents and their kindred shall be entitled to inherit real and personal property from and through the child in accordance with said statutes.

(2) After a final decree of adoption is entered, the natural parents and the kindred of the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent shall be relieved of all parental responsibilities for said child and have no rights over such adopted child or to his property by descent and distribution.

History: En. Sec. 12, Ch. 240, L. 1957; amd. Sec. 1, Ch. 102, L. 1965.

section (1); and inserted "and the kindred of the natural parents" following "the natural parents" near the beginning of subsection (2).

Amendment

The 1965 amendment inserted "and the kindred of the adoptive parents" following "through the adoptive parents" and "and their kindred" following "and the adoptive parents" in the second sentence of sub-

References

In re Jones' Estate, 146 M 439, 408 P 2d 482.

TITLE 62—PARKS AND PUBLIC RECREATION

- Chapter 3. State parks, 62-301, 62-304, 62-305, 62-307, 62-310, 62-311, 62-314.
4. Development of outdoor recreational resources, 62-401 to 62-404.
5. Horse racing, 62-501 to 62-514.
6. Open-space land, 62-601 to 62-609.

CHAPTER 2—CITY, TOWN AND SCHOOL DISTRICT CIVIC CENTERS, PARKS AND RECREATIONAL FACILITIES

62-201. (5159) Public parks and grounds, civic and youth centers, etc.

Cross-Reference

Building specifications for accommoda- tion of handicapped persons, secs. 69-3701 to 69-3719.

CHAPTER 3—STATE PARKS

- Section 62-301. Purpose.
62-304. Powers and duties.
62-305. Disposal of fees and charges.
62-307. Connecting roads.
62-310. Establishment of state scientific and recreational park.
62-311. Rules and regulations governing use.
62-314. Penalties for violation of state park regulations.

62-301. Purpose. That for the purpose of conserving the scenic, historic, archaeologic, scientific and recreational resources of the state, and of providing for their use and enjoyment, thereby contributing to the cultural, recreational and economic life of the people and their health, the state fish and game commission (hereinafter referred to as commission) is hereby vested with the duties and powers hereinafter set forth.

History: En. Sec. 1, Ch. 48, L. 1939;
amd. Sec. 1, Ch. 178, L. 1953; amd. Sec.
1, Ch. 69, L. 1965.

Amendment

The 1965 amendment substituted "state fish and game commission" for "state highway commission."

62-304. Powers and duties. The commission is hereby authorized and directed to make a study to determine the scenic, historic, archaeologic, scientific and recreational resources of the state, and shall have power by purchase, lease, agreement, or by acceptance of donations, or condemnation, to acquire for and in the name of the state, any such areas, sites, or objects which in its opinion should be held, improved, and maintained as state parks, state recreational areas, state monuments, or state historical sites. The commission shall also have power in its discretion to receive and accept in the name of the state, in fee or otherwise, any such areas, sites, or objects conveyed, entrusted, donated, or devised to the state, and with like discretion to accept gifts, grants, bequests, or contributions of money or other property to be expended or used for any of the purposes of this act; provided, that no contract shall be entered into or other obligation incurred under the provisions of this act until moneys have been appropriated therefor by the legislature or are otherwise made

available as herein provided. The commission shall also have jurisdiction, custody and control of all state parks, recreational areas, public camping grounds, historical sites, and monuments which are now under the control and management of the state, except wayside camps and other public conveniences acquired, improved and maintained by the state highway commission and contiguous to the state highway system. The commission shall have the authority to designate lands under its control as state parks, state historical sites, state monuments, or by such other designation as it deems appropriate, or to de-designate any area or portion thereof as designated, and to name or change the name of any area as designated, and to lease such portions of designated lands as may be necessary for the proper administration of these lands in keeping with the basic purpose of this act.

History: En. Sec. 4, Ch. 48, L. 1939; amd. Sec. 1, Ch. 46, L. 1955; amd. Sec. 2, Ch. 69, L. 1965; amd. Sec. 1, Ch. 135, L. 1969.

Amendments

The 1965 amendment substituted "except" for "including" before "wayside camps and other public conveniences" near the end of the third sentence.

The 1969 amendment inserted "grants" after "gifts" in the second sentence and added the last sentence.

Effective Date

Section 2 of Ch. 135, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

Acquisition of Buffalo Jump Site

Chapter 70, Laws of 1965, authorized the board of land commissioners to acquire a particular tract known as the site of a buffalo jump and to turn the tract over to the fish and game commission. The act read: "An act to permit the state board of land commissioners to acquire a tract of land which is of archeo-

logical, historic or scientific interest and should be preserved for posterity; providing for an effective date.

"Section 1. The state board of land commissioners is hereby authorized to acquire Section 34, Township 1 N, Range 2E, M.P.M., which is of archeological, historic or scientific interest and should be preserved for the benefit of the people. The acquisition of such land may be by gift, bequest, purchase, lease, or exchange of other state land of equal value. The state board of land commissioners shall take title to such land in the name of the state for the use and benefit of the agency responsible for administering state parks. Upon acquisition of such land, the state agency responsible for administering state parks is hereby authorized to enter into contracts or agreements with the federal government, other departments or agencies of the state government, county and municipal government, as may be necessary to the proper care and management of the object to be protected and preserved for posterity.

"Section 2. This act shall be in full force and effect after its passage and approval. Approved February 26, 1965."

62-305. Disposal of fees and charges. The commission shall have power to levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided, and to grant such concessions as it may deem advisable. All moneys derived from the activities of the commission shall be deposited in the state treasury in the earmarked revenue fund to the credit of the commission.

History: En. Sec. 5, Ch. 48, L. 1939; amd. Sec. 26, Ch. 147, L. 1963; amd. Sec. 1, Ch. 87, L. 1967.

Amendments

The 1963 amendment substituted "except from conditional gifts" for "and from unconditional gifts" near the beginning of a former second sentence; substituted "the general fund" at the end of the

same sentence for "the state park fund, which fund is hereby created, and shall constitute a continuing fund to be used and expended by the commission for any of the purposes of this act"; and added a former third sentence.

The 1967 amendment substituted the present last sentence of this section for the former last two sentences which read "All moneys derived from the activities

of the commission, except from conditional gifts, donations, bequests and endowments, shall be deposited in the state treasury to the credit of the general fund.

Moneys derived from conditional gifts, donations, bequests and endowments may be deposited in the federal and private revenue fund."

62-307. Connecting roads. The state highway commission is hereby authorized to construct, improve and maintain with state highway funds connecting roads between existing state highways and state parks; provided, that each such road shall not exceed a total length of ten (10) miles.

History: En. Sec. 7, Ch. 48, L. 1939; amd. Sec. 2, Ch. 178, L. 1953; amd. Sec. 3, Ch. 69, L. 1965.

Amendment

The 1965 amendment substituted "state parks" immediately before the proviso for "lands and properties under the jurisdiction of the commission."

62-310. Establishment of state scientific and recreational park. That in order to preserve and protect the biological station grounds hereafter referred to, and to remove fire hazards and the danger of other encroachments tending to detract from the scientific values and uses thereof, the state fish and game commission is authorized to maintain a state scientific and recreational park on a suitable area to be designated by it not exceeding fifteen (15) acres at the southeast portion of the lands granted by the United States of America to the state of Montana for the use of the university of Montana for biological station purposes.

History: En. Sec. 1, Ch. 108, L. 1941; amd. Sec. 3, Ch. 178, L. 1953; amd. Sec. 4, Ch. 69, L. 1965.

Amendment

The 1965 amendment substituted "state fish and game commission" for "state highway commission"; and deleted the words "established and" before "maintain a state scientific and recreational park."

62-311. Rules and regulations governing use. The state fish and game commission shall make such rules and regulations governing the park's use, occupancy and the protection of the remaining lands of said grant that the use of all of said lands for biological station purposes shall be promoted and continued; and the park itself shall be so maintained as to develop and encourage public interest in the scientific and biological resources of the area; provided, however, that nothing herein contained shall operate to prevent the use of the area within the said park for biological station purposes whenever it becomes useful or necessary for such purposes.

History: En. Sec. 2, Ch. 108, L. 1941; amd. Sec. 4, Ch. 178, L. 1953; amd. Sec. 5, Ch. 69, L. 1965.

Amendment

The 1965 amendment deleted the words "That if and when said park is estab-

lished" at the beginning of the section; substituted "state fish and game commission" for "state highway commission"; substituted "the park's use" for "its use"; and deleted "established and" before "maintained as to develop."

62-314. (1842.3) Penalties for violation of state park regulations. Any person who shall injure or damage any state or private property thereon or therein, or shall violate any of the regulations made by the state fish and game commission relating to the state parks, shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars

(\$500) or be imprisoned in the county jail for not more than six (6) months.

History: En. Sec. 3, Ch. 111, L. 1929; amd. Sec. 5, Ch. 178, L. 1953; amd. Sec. 6, Ch. 69, L. 1965.

Amendment

The 1965 amendment deleted "in any unusual way" after "injure or damage"; and substituted "state fish and game commission" for "state highway commission."

CHAPTER 4—DEVELOPMENT OF OUTDOOR RECREATIONAL RESOURCES

- Section 62-401. Legislative findings—purpose of act.
 62-402. State agency for Land and Water Conservation Fund Act.
 62-403. Compliance with federal act authorized—powers of commission.
 62-404. Advisory and planning committee—composition and functions.

62-401. Legislative findings—purpose of act. Montana is uniquely endowed with scenic landscapes and areas rich in recreational value. This outdoor heritage enriches the lives of citizens, attracts new residents and businesses to the state, and is of major significance to the expanding tourist industry. It is the purpose of this act to give authority to the Montana state fish and game commission to plan and develop outdoor recreational resources in the state which authority shall permit receiving and expending funds including federal grants for this purpose.

History: En. Sec. 1, Ch. 235, L. 1965.

Title of Act

An act to permit the Montana fish and game commission to plan and develop outdoor recreational resources in the state,

which authority shall permit receiving and expending funds including federal grants for this purpose; creating an outdoor recreation advisory and planning committee; providing that the act is effective on passage and approval.

62-402. State agency for Land and Water Conservation Fund Act. The fish and game commission is hereby designated as the state agency to represent and act for the state for the purpose of implementing the "Land and Water Conservation Fund Act of 1965."

History: En. Sec. 2, Ch. 235, L. 1965. Fund Act of 1965 may be found at 16 U. S. Code 4601-4 to 4601-11.

Compiler's Note

The Land and Water Conservation

62-403. Compliance with federal act authorized—powers of commission. The fish and game commission shall do those things necessary to comply with the provisions of the "Land and Water Conservation Fund Act of 1965." Among other things, the fish and game commission may

(1) Prepare a comprehensive statewide outdoor recreational plan which shall contain

(a) An evaluation of the demand for and supply of outdoor recreational resources and facilities in Montana, and

(b) A program for implementation of the plan.

(2) Accept and administer moneys paid by the secretary of the interior for approved projects.

(3) Contract with other state agencies, cities, counties and other political subdivisions of the state, private organizations, and agencies of the federal government.

(4) Acquire, other than by eminent domain, and develop outdoor recreational areas and facilities, and land and waters, and interests in land and waters for such areas and facilities.

(5) For the purpose of implementing the "Land and Water Conservation Fund Act of 1965," co-ordinate its activities with, and represent the interests of, all agencies of state, city, county, and other governmental units with outdoor recreational responsibilities.

History: En. Sec. 3, Ch. 235, L. 1965.

62-404. Advisory and planning committee—composition and functions. There is created the outdoor recreation advisory and planning committee consisting of not more than twenty (20) members. The members of the committee shall be appointed by the governor and shall serve at the pleasure of the governor. The committee shall elect a chairman and any other necessary officers.

The function of the committee is to advise and consult with the fish and game commission on all phases of this act.

History: En. Sec. 4, Ch. 235, L. 1965. vided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

Effective Date

Section 5 of Ch. 235, Laws 1965 pro-

CHAPTER 5—HORSE RACING

- Section 62-501. Horse racing commission created—appointment—removal—claims.
 62-502. Definitions.
 62-503. Chairman—quorum—costs.
 62-504. Commission's report—public record.
 62-505. Duties of commission and licensees—license fee.
 62-506. Authority of commission.
 62-507. License—application therefor—type and number of races—fee per day—refund—cancellation—hearing.
 62-508. Penalty for violations of law—power of commission.
 62-509. Race exclusively for Montana bred horses—bonus for winner.
 62-510. Public liability insurance.
 62-511. Parimutuel betting—other betting illegal.
 62-512. Distributions of deposits—breakage.
 62-513. Licensee's right to withhold deposits.
 62-514. Gross receipts—commission's percentage—collection and allocation.

62-501. Horse racing commission created—appointment—removal—claims. There is hereby created the Montana horse racing commission, to consist of three (3) members, who shall be citizens, residents and qualified electors of the state of Montana. At least one (1) member shall be a breeder of thoroughbred or quarter horses.

The members of said commission shall be appointed by the governor within thirty (30) days after this act takes effect, and one (1) for a term to expire on the Thursday following the second Monday in January, 1966, and one (1) for a term to expire on the Thursday following the second Monday in January, 1967, and one (1) for a term to expire on the Thursday following the second Monday in January, 1968, and

upon the expiration of the term of any member of said commission, the governor shall appoint a successor for a term of three (3) years with the consent of the senate.

Each member shall hold office until his successor is appointed and qualified. Vacancies on the commission shall be filled by appointment to be made by the governor for the unexpired term.

Any member may be removed from office by the governor for cause after a public hearing. Notice of said hearing shall fix the time and place of hearing and shall specify the charges. Copy of the notice of hearing shall be served on the member by mailing the same to the member at his last known address at least ten (10) days before the date fixed for said hearing.

History: En. Sec. 1, Ch. 196, L. 1965. mission and defining its powers and duties, repealing sections 94-2425, 84-6501, R. C. M. 1947; providing for an effective date

Title of Act

An act establishing a horse racing com-

62-502. Definitions. As used in this act.

- (1) "Commission" means Montana horse racing commission.
- (2) "Persons" means individuals, firms, corporations and associations.
- (3) "Race meet" means and includes any exhibition of thoroughbred, purebred, and/or registered horse racing where the parimutuel system of wagering is used. Singular shall include the plural and plural shall include the singular; and words importing one gender shall be regarded as including all other genders.

History: En. Sec. 2, Ch. 196, L. 1965.

62-503. Chairman—quorum—costs. The commission shall organize by electing one (1) of its members chairman. Two (2) members of the commission shall constitute a quorum for the transaction of any and all business of the commission.

The commission may incur all such costs, charges and expenses as are reasonably necessary in carrying out the intent and purposes of this act.

History: En. Sec. 3, Ch. 196, L. 1965.

62-504. Commission's report—public record. The commission shall keep detailed records of all meetings and of the business transacted therein, and all licenses applied for and issued. The commission shall report as provided in section 2 [82-4002] of this act.

All records of the commission shall be public records, and as such subject to public inspection.

History: En. Sec. 4, Ch. 196, L. 1965; **Amendments**
amd. Sec. 17, Ch. 93, L. 1969.

The 1969 amendment substituted the reference to the reporting requirements of section 82-4002 for provisions relating to a required annual report to the governor.

62-505. Duties of commission and licensees—license fee. It shall be the duty of the commission, as soon as possible after its organization, to prepare and promulgate a complete set of rules and regulations to govern race meets and the parimutuel system. Such rules and regulations shall

include, but shall not be limited to the following, to wit: definitions, auditing and supervision of the parimutuel system, corrupt practices, supervision, duties and responsibilities of the presiding steward, racing secretary and other racing officials, licensing of all personnel who have any function whatsoever to do with the substantive operation of racing, the establishment of dates for race meets and meetings in the best interests of breeding and racing in the state of Montana, and the veterinary practices and standards which must be observed in connection with race meets. Rules pertaining to medication, testing of horses, examining horses prior to racing, and banning horses from running shall meet the approval of an advisory committee of the Montana veterinary medical association. Every person who shall participate in any race meet shall be licensed and a fee will be charged. The annual license fee for each person required to be licensed shall not exceed ten dollars (\$10) which shall be paid to the commission and used for operating expenses of the commission. It shall be the duty of each person holding a license under the authority of the act, and every owner, trainer, jockey, and attendant at any race course in this state, to comply with this act and with all rules and regulations promulgated and all orders issued by the commission.

History: En. Sec. 5, Ch. 196, L. 1965; amd. Sec. 1, Ch. 216, L. 1967.

Amendments

The 1967 amendment added the present fourth sentence and deleted a former second paragraph which read, "It shall be unlawful for any owner, trainer, or jockey, to participate in any race meet without first securing and having in full force and effect, an annual license therefor from the commission. The license fee for such annual license shall be five dol-

lars (\$5), which shall be paid to the commission and used for operating expenses of the commission. All claims and expenditures under this act shall be first audited and passed upon by the commission. When they are approved, they shall be paid from the license fee. If the license fees exceed the commission expenses, the excess shall be deposited to the state general fund, provided that in no event shall commission expenses be paid in an amount in excess of the aforementioned license fees."

62-506. Authority of commission. The commission created by this act is hereby authorized and it shall be its duty to license, regulate, and supervise all race meets held in this state under the terms of this act, and to cause the various places where race meets are held to be visited and inspected at least once a year.

History: En. Sec. 6, Ch. 196, L. 1965.

62-507. License—application therefor—type and number of races—fee per day—refund—cancellation—hearing. It shall be unlawful for any person to hold any race meet in this state without having first obtained and having in force and effect a license issued by the commission as in this act provided. Every person making application for a license to hold a race meet, under the provisions of this act, shall file an application with the commission which shall set forth the time, place and number of days such license will continue, and such other information as the commission may require.

No person who has been convicted of any crime involving moral turpitude shall be issued a license of any kind, nor shall any license be issued to any person who has violated the terms or provisions of this act, or any

of the rules and regulations of the commission, or who has failed to pay any of the fees, taxes or moneys required under the provisions of this act.

All applications to hold race meets shall be submitted to the commission which shall act upon such applications within thirty (30) days. The commission shall be the sole judge of whether or not the race meet shall be licensed and the number of days the meet shall continue.

It shall be the duty of the commission to require that fairs conducting race meets in conjunction with their regularly scheduled fair shall meet the requirements of the rules and regulations set up by the racing commission prior to granting them their license. Any unexpired license held by any person who violates any of the provisions of this act, pursuant thereto, or who fails to pay to the commission any and all sums required under the provisions of this act, shall be subject to cancellation and revocation by the commission. Such cancellation shall be made only after a summary hearing before the commission, of which three (3) days' notice, in writing, shall be given the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation.

History: En. Sec. 7, Ch. 196, L. 1965; amd. Sec. 2, Ch. 216, L. 1967.

Amendments

The 1967 amendment, in the first para-

graph, inserted "license" before "will continue"; and deleted the last sentence in that paragraph, which read, "There will be no license fee charge for a racing meet except as now provided in 84-6502."

62-508. Penalty for violations of law—power of commission. Any person holding a race meet, and any owner, trainer, or jockey participating in a race meet, without first being licensed by the commission, and any person willfully violating any of the terms or provisions of this act is guilty of a misdemeanor.

The commission shall have the power to exclude from any and all race courses in this state any person whom the commission deems detrimental to the best interest of racing, or any person who willfully violates any of the provisions of this act or any rule, regulation, or order of the commission.

It shall be lawful to conduct race meets on or at a race track or otherwise, at any time during the week.

History: En. Sec. 8, Ch. 196, L. 1965.

62-509. Race exclusively for Montana bred horses—bonus for winner. For the purpose of encouraging the breeding, within the state, of valuable thoroughbred, purebred, quarter horse, appaloosa and/or registered horses, at least one (1) race each day at each race meet shall be limited to Montana bred horses. If in the opinion of the commission sufficient competition cannot be had among such class of horses, said race may be eliminated for said day and a substitute race provided instead.

A sum equal to ten per cent (10%) of the first money of every purse won by a Montana bred horse shall be paid by the licensee conducting the race meet to the breeder of such horse.

History: En. Sec. 9, Ch. 196, L. 1965.

62-510. Public liability insurance. For the protection of the public, and all members thereof, the exhibitors and visitors, every person licensed to conduct a race meet under the provisions of this act shall carry public liability insurance in an amount and form of contract to be approved by the commission.

History: En. Sec. 10, Ch. 196, L. 1965; approved by the commission" for "and
amd. Sec. 3, Ch. 216, L. 1967. with a company authorized to do business in Montana" at the end of the section.

Amendments

The 1967 amendment substituted "to be

62-511. Parimutuel betting—other betting illegal. It shall be unlawful to make or report or record or register any bet or wager upon the result of any contest of speed or skill or endurance of any animal, whether such contest is held within or without the state of Montana, except as herein provided.

Any licensee conducting a race meet under this act may provide a place or places in the race meet grounds or enclosure at which such licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted by such licensee at such race meet, and such parimutuel system conducted at such race meet shall not under any circumstances, if conducted under the provisions of this act and in conformity thereto and to the rules and regulations of the commission, to be held or construed to be unlawful, other statutes of this state to the contrary notwithstanding.

It shall be unlawful to conduct pool selling, book making, or to circulate handbooks, or to bet or wager on a race of any licensed race meet, other than by the parimutuel system, and in the race meet grounds or enclosure where the race is held, and it shall further be unlawful to permit any minor to use the parimutuel system.

History: En. Sec. 11, Ch. 196, L. 1965; **Amendments**
amd. Sec. 4, Ch. 216, L. 1967.

The 1967 amendment inserted the first paragraph.

62-512. Distributions of deposits—breakage. Each licensee conducting the parimutuel system shall distribute all sums deposited in any pool to the winner thereof, less an amount which shall not exceed twenty per cent (20%) of the total deposits plus the odd cents of all redistribution to be based on each dollar deposited exceeding a sum equal to the next lowest multiple of ten (10), known as "breakage."

History: En. Sec. 12, Ch. 196, L. 1965.

62-513. Licensee's right to withhold deposits. In the event any government or governmental agency imposes a levy on a licensee, by a special tax on the money so deposited under the parimutuel system, or upon or against his receipts therefrom, the said licensee may withhold in addition to the aforesaid per centum and breakage the amount of the tax so levied.

History: En. Sec. 13, Ch. 196, L. 1965.

62-514. Gross receipts—commission's percentage—collection and allocation. The licensee shall pay to the commission one per cent (1%) of

all gross receipts of each day's parimutuel betting at each race meet, which sums shall be paid to the commission within five (5) days after receipt by the licensee. At the end of each race meeting it shall be the duty of the licensee to prepare a report to the commission showing the amount of the overpayments and underpayments. Should the report show the underpayments to be in excess of the overpayments such balance shall be paid to the commission. All moneys paid to or received by the commission may be expended in payment of the expenses incurred in carrying out the provisions of this act. No expenditure shall be made until the commission has audited and approved the claim.

History: En. Sec. 14, Ch. 196, L. 1965; amd. Sec. 5, Ch. 216, L. 1967.

Amendments

The 1967 amendment completely rewrote this section. Prior to amendment it read, "License tax receipts on racing associations shall be collected and disposed of as provided by section 84-6502, R. C. M. 1947."

Repealing Clauses

Section 15 of Ch. 196, Laws 1965 read "Repealing section 94-2425, R. C. M. 1947, and section 84-6501, R. C. M. 1947, enacted as section 1, chapter 57, Laws of 1961, and all acts and parts of acts in conflict herewith."

Section 6 of Ch. 216, Laws 1967 read "Sections 84-6502, 84-6503 and 84-6504, R. C. M. 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

Separability Clause

Section 16 of Ch. 196, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Dates

Section 17 of Ch. 196, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 5, 1965.

Section 7 of Ch. 216, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

CHAPTER 6—OPEN-SPACE LAND

- Section 62-601. Short title.
 62-602. Purposes of act.
 62-603. Definitions.
 62-604. Acquisition and designation of real property by public body.
 62-605. Conversion or diversion of open-space land, where prohibited—substitution of other realty—conveyance or lease of open-space land authorized.
 62-606. Powers of public bodies.
 62-607. Planning commission authorized—funding.
 62-608. Taxation of property where public body owns less than fee.
 62-609. Legislative intent that act severable—act controlling over other provisions—powers supplemental.

62-601. Short title. This act shall be known and may be cited as the "Open-Space Land Act."

History: En. Sec. 1, Ch. 337, L. 1969.

Title of Act

An act to provide for the acquisition

and designation of real property by the state, counties and municipalities of real property for use as permanent open-space land.

62-602. Purposes of act. The legislature finds that the rapid growth and spread of urban development are creating critical problems of service and finance for the state and local governments; that the present

and future rapid population growth in urban areas is creating severe problems of urban and suburban living; that the provision and preservation of permanent open-space land are necessary to help curb urban sprawl, to prevent the spread of urban blight and deterioration, to encourage and assist more economic and desirable urban development, to help provide or preserve necessary park, recreational, historic and scenic areas and to conserve land and other natural resources; that the acquisition or designation of interests and rights in real property by public bodies to provide or preserve permanent open-space land is essential to the solution of these problems, the accomplishment of these purposes, and the health and welfare of the citizens of the state; and that the exercise of authority to acquire or designate interests and rights in real property to provide or preserve permanent open-space land and the expenditure of public funds for these purposes would be for a public purpose.

Pursuant to these findings, the legislature states that the purposes of this act are to authorize and enable public bodies to provide and preserve permanent open-space land in urban areas in order to assist in the solution of the problems and the attainment of the objectives stated in its findings.

History: En. Sec. 2, Ch. 337, L. 1969.

62-603. Definitions. The following terms whenever used or referred to in this act shall have the following meanings unless a different meaning is clearly indicated by the context:

(a) "Public body" means the state, counties, cities, towns and other municipalities.

(b) "Urban area" means any area which is urban in character, including surrounding areas which form an economic and socially related region; taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities.

(c) "Open-space land" means any land in an urban area which is provided or preserved for (1) park or recreational purposes, (2) conservation of land or other natural resources, (3) historic or scenic purposes, or (4) assisting in the shaping of the character, direction, and timing of community development.

(d) "Comprehensive planning" means planning for development of an urban area and shall include: (1) preparation, as a guide for long-range development, of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for such development; (2) programming and financing plans for capital improvements; (3) co-ordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and (4) preparation of regulatory and administrative measures in support of the foregoing.

History: En. Sec. 3, Ch. 337, L. 1969.

62-604. Acquisition and designation of real property by public body. To carry out the purposes of this act, any public body may (1) acquire by purchase, gift, devise, bequest or grant title to or any interests or rights in real property that will provide a means for the preservation or provision of permanent open-space land and (2) designate any real property in which it has an interest to be retained and used for the preservation and provision of permanent open-space land. The use of the real property for permanent open-space land shall conform to comprehensive planning being actively carried on for the urban area in which the property is located.

History: En. Sec. 4, Ch. 337, L. 1969.

62-605. Conversion or diversion of open-space land, where prohibited—substitution of other realty—conveyance or lease of open-space land authorized. (a) No open-space land, the title to, or interest or right in which has been acquired under this act or which has been designated as open-space land under the authority of this act shall be converted or diverted from open-space land use unless the conversion or diversion is determined by the public body to be (1) essential to the orderly development and growth of the urban area, and (2) in accordance with the program of comprehensive planning for the urban area in effect at the time of conversion or diversion. Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as permanent open-space land shall be substituted within a reasonable period not exceeding one (1) year for any real property converted or diverted from open-space land use. The public body shall assure that the property substituted will be subject to the provisions of this act.

(b) A public body may convey or lease any real property it has acquired or which has been designated for the purposes of this act. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land, unless the property is to be converted or diverted from open-space land use in accordance with the provisions of subsection (a) of this section.

History: En. Sec. 5, Ch. 337, L. 1969.

62-606. Powers of public bodies. (a) A public body shall have all the powers necessary or convenient to carry out the purposes and provisions of this act, including the following powers in addition to others granted by this act:

(1) to borrow funds and make expenditures necessary to carry out the purposes of this act;

(2) to advance or accept advances of public funds;

(3) to apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give such security as may be required and to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government such

conditions imposed pursuant to federal laws as the public body may deem reasonable and appropriate and which are not inconsistent with the purposes of this act;

(4) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this act;

(5) in connection with the real property acquired or designated for the purposes of this act, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities or structures that may be necessary to the provision, preservation, maintenance and management of the property as open-space land;

(6) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(7) to demolish or dispose of any structures or facilities which may be detrimental to or inconsistent with the use of real property as open-space land; and

(8) to exercise any or all of its functions and powers under this act jointly or co-operatively with public bodies of one or more states, if they are so authorized by state law, and with one or more public bodies of this state, and to enter into agreements for joint or co-operative action.

(b) For the purposes of this act, the state, or a city, town, other municipality, or county may:

(1) appropriate funds;

(2) levy taxes and assessments according to existing codes and statutes not to exceed one (1) mill;

(3) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state; and

(4) exercise its powers under this act through a board or commission, or through such office or officers as its governing body by resolution determines, or as the governor determines in the case of the state.

History: En. Sec. 6, Ch. 337, L. 1969.

62-607. Planning commission authorized—funding. The state, counties, cities, towns, or other municipalities in an urban area, acting jointly or in co-operation, are authorized to perform comprehensive planning for the urban area and to establish and maintain a planning commission for this purpose and related planning activities. Funds may be appropriated and made available for the comprehensive planning, and financial or other assistance from the federal government and any other public or private sources may be accepted and utilized for the planning.

History: En. Sec. 7, Ch. 337, L. 1969.

62-608. Taxation of property where public body owns less than fee. Where an interest in real property less than the fee is held by a public body for the purposes of this act, assessments made on the property for

taxation shall reflect any change in the market value of the property which may result from the interest held by the public body. The value of the interest held by the public body shall be exempt from property taxation to the same extent as other property owned by the public body.

History: En. Sec. 8, Ch. 337, L. 1969.

62-609. Legislative intent that act severable—act controlling over other provisions—powers supplemental. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

In so far as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling. The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law.

History: En. Sec. 9, Ch. 337, L. 1969.

TITLE 63—PARTNERSHIP

- Chapter 6. Partnership—use of fictitious name, 63-601, 63-603.
7. Special partnership—formation, 63-702.
9. Special partnership—alteration and dissolution—construction of act—existing partnerships, 63-906.

CHAPTER 1—PARTNERSHIP IN GENERAL—PRELIMINARY PROVISIONS—NATURE OF PARTNERSHIP

63-101. Name of act.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Partnership Act: District of Columbia and Virgin Islands.

CHAPTER 2—PARTNERSHIP IN GENERAL—RELATION OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

63-207. Nature of partner's liability.

Joint Venture

Since joint ventures and partnerships are similar, employee of joint venture covered under Workmen's Compensation Act was employee of individual members of

joint venture and consequently could not maintain action to recover damages from individual member of joint venture for negligence. *Hamman v. United States*, 267 F Supp 420.

CHAPTER 5—GENERAL PARTNERSHIP—DISSOLUTION AND WINDING UP

63-502. Partnership not terminated by dissolution.

Disposition of Assets

Where surviving partners of law partnership were unable to agree on distribution of pending cases, an asset of the partnership, and it became necessary to appoint a special master to facilitate final

dissolution, decision to split returns of unfinished business, two-thirds to partner handling business and one-third to other, was fair. *In re Mondale & Johnson*, 150 M 534, 437 P 2d 636.

CHAPTER 6—PARTNERSHIP—USE OF FICTITIOUS NAME

Section 63-601. Fictitious name.

63-603. Change of membership—filing new certificate.

63-601. (8019) Fictitious name. Every partnership, other than a limited partnership, transacting business in this state under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which its principal place of business is situated, a certificate, stating the names in full of all the members of such partnership and their places of residence, and publish the same once a week, for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county.

History: En. Sec. 3280, Civ. C. 1895; re-en. Sec. 5504, Rev. C. 1907; re-en. Sec. 8019, R. C. M. 1921; amd. Sec. 2, Ch. 111, L. 1969. Cal. Civ. C. Sec. 2466.

Amendments

The 1969 amendment inserted "other than a limited partnership."

Application of Law

The filing of the certificate under this section is not a prerequisite to a valid partnership or engaging in business as a partnership. *First Security Bank v. United States*, 213 F Supp 362, 367.

63-602. (8020) Certificate—when to be filed.

Application of Law

The disability imposed by this section is limited to maintaining an action on

an account or contract. *First Security Bank v. United States*, 213 F Supp 362, 367.

63-603. (8021) Change of membership—filing new certificate. On every change of the members of a partnership, other than a limited partnership, transacting business in this state under a fictitious name, or a designation which does not show the names of the persons interested as partners in its business, a new certificate must be filed with the county clerk, and a new publication made, as required by this chapter, on the formation of such partnership.

History: En. Sec. 3282, Civ. C. 1895; re-en. Sec. 5506, Rev. C. 1907; re-en. Sec. 8021, R. C. M. 1921; amd. Sec. 3, Ch. 111, L. 1969. Cal. Civ. C. Sec. 2469.

Amendments

The 1969 amendment inserted "other than a limited partnership."

CHAPTER 7—SPECIAL PARTNERSHIP—FORMATION

Section 63-702. Formation.

63-701. Limited partnership defined.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have

adopted the Uniform Limited Partnership Act: District of Columbia, Mississippi, and also Virgin Islands.

63-702. Formation. (1) Two or more persons desiring to form a limited partnership shall

(a) Sign and swear to a certificate, which shall state I to XIV. * * * [Same as parent volume.]

(b) File the certificate in the office of the county clerk and recorder of the county, if any, in which the principal place of business is located, and in the office of the secretary of state.

(2). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 252, L. 1947; amd. Sec. 1, Ch. 111, L. 1969.

Amendments

The 1969 amendment, in subdivision (1) (b), deleted "for record" after "file" and added "of the county * * * secretary of state."

CHAPTER 9—SPECIAL PARTNERSHIP—ALTERATION AND DISSOLUTION—CONSTRUCTION OF ACT—EXISTING PARTNERSHIPS

Section 63-906. Requirements for amendment and for cancellation of certificate.

63-906. Requirements for amendment and for cancellation of certificate. (1) (a) and (b). * * * [Same as parent volume.]

(2) and (3). * * * [Same as parent volume.]

(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the county clerk and recorder in the office where the certificate is filed and the secretary of state to file the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed in said offices a certified copy of its decree setting forth the amendment.

(5) A certificate is amended or canceled when there is filed in the offices where the certificate is filed:

(a) and (b). * * * [Same as parent volume.]

(6). * * * [Same as parent volume.]

History: En. Sec. 25, Ch. 252, L. 1947; amd. Sec. 4, Ch. 111, L. 1969.

Amendments

The 1969 amendment, in subsection (4), substituted "filed and the secretary of state to file" for "recorded to record," de-

leted "for record" after "cause to be filed," and substituted "said offices" for "said office" and, in subsection (5), substituted "filed in * * * is filed" for "filed for record in the office of the county clerk and recorder where the certificate is recorded."

TITLE 64—PERSONS AND PERSONAL RIGHTS

- Chapter 1. Persons, minors, adults and those of unsound mind, 64-106.1.
3. Freedom from discrimination, 64-301 to 64-303.

CHAPTER 1—PERSONS, MINORS, ADULTS AND THOSE OF UNSOUND MIND

Section 64-106.1. Capacity of minors to borrow money for education.

64-106.1. Capacity of minors to borrow money for education. Any person who, being a minor, contracts to borrow money to defray the expenses of attending any college or university or other institution of higher education beyond high school, shall have full legal capacity to act in his own behalf and shall have all the rights, powers and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

History: En. Sec. 1, Ch. 34, L. 1963.

Title of Act

An act to establish legal capacity and

obligation of minors in contracting to borrow money to finance education beyond high school.

CHAPTER 2—PERSONAL RIGHTS—LIBEL AND SLANDER—PROTECTION OF PERSONAL RELATIONS

64-203. (5690) Libel defined.

Libel per Se

Where complaint alleges no special damages, the action is brought on the

theory of libel per se and not per quod. Steffes v. Crawford, 143 M 43, 386 P 2d 842.

64-207.1. Notice, etc. to publisher of libelous or defamatory matter, etc.

Tour Book

Annual publication "Northwestern Tour Book" which lists and rates motels, hotels and eating establishments was "book" rather than "periodical" and motel owner

who objected to unsolicited rating was not required to give notice as required by statute preparatory to bringing suit for libel. Fifield v. American Automobile Assn., 262 F Supp 253.

64-208. (5692) What communications are privileged.

References

Bollinger v. Jarrett, 146 M 355, 406 P 2d 834.

CHAPTER 3—FREEDOM FROM DISCRIMINATION

Section 64-301. Freedom from discrimination as civil right—employment—public accommodations.

64-302. Definition of terms.

64-303. Discrimination as misdemeanor.

64-301. Freedom from discrimination as civil right—employment—public accommodations. The right to be free from discrimination because of race, creed, color or national origin is recognized as and declared to be a civil right. This right shall include, but not be limited to:

- (1) The right to obtain and hold employment without discrimination.
- (2) The right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage or amusement.

History: En. Sec. 1, Ch. 201, L. 1965. ing terms; and providing for a penalty for violations.

Title of Act

An act to provide for civil rights; defin-

64-302. Definition of terms. Terms used in this act shall have the following definitions:

(a) "Every person" shall be construed to include any owner, lessee, proprietor, manager, agent or employee whether one or more natural persons, partnerships, associations, organizations, corporations, co-operatives, legal representatives, trustees, receivers, of this state and its political subdivisions, boards and commissions, engaged in or exercising control over the operation of any place of public resort, accommodation, assemblage or amusement.

(b) "Deny" is hereby defined to include any act which directly or indirectly, or by subterfuge, by a person or his agent or employee, results or is intended or calculated to result in whole or in part in any discrimination, distinction, restriction or unequal treatment or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying or lodging in any place of public resort, accommodation, assemblage or amusement except for conditions and limitations established by law and applicable alike to all persons, regardless of race, creed or color.

(c) "Full enjoyment of" shall be construed to include the right to purchase any service, commodity or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, without acts directly or indirectly causing persons of any particular race, creed or color, to be treated as not welcome, accepted, desired or solicited.

(d) "National origin" includes "ancestry."

(e) "Any place of public resort, accommodation, assemblage or amusement" is hereby defined to include, but not to be limited to, any public place, licensed or unlicensed, kept for gain, hire or reward, or where charges are made for admission, service, occupancy or use of any property or facilities, whether conducted for the entertainment, housing or lodging of transient guests, or for the benefit, use or accommodation of those seeking health, recreation or rest, or for the sale of goods and merchandise, or for the rendering of personal service, or for public conveyance or transportation on land, water or in the air, including the

stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates or assembles for amusement, recreation of public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or any educational institution wholly or partially supported by public funds, or schools of special instruction, or nursery schools, or day care centers or children's camps; nothing herein contained shall be construed to include, or apply to, any institute, bona fide club, or place of accommodation, which is by its nature distinctly private provided that where public use is permitted that use shall be covered by this section; nor shall anything herein contained apply to any educational facility operated or maintained by a bona fide religious or sectarian institution; and the right of a natural parent in loco parentis to direct the education and upbringing of a child under his control is hereby affirmed.

History: En. Sec. 2, Ch. 201, L. 1965.

64-303. Discrimination as misdemeanor. Every person who denies to any other person because of race, creed, color or national origin the right to employment; (a) by refusing to hire, (b) by discharging, (c) by barring from employment, or (d) by discriminating against such person in compensation or in other terms or conditions of employment; and every person who denies to any other person because of race, creed, color or national origin the full enjoyment of any of the accommodations, advantages, facilities or privileges of any place of public resort, accommodation, assemblage or amusement, shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 201, L. 1965.

TITLE 65—PLEDGES AND TRUST RECEIPTS

Chapter 2. Uniform Trust Receipts Act, Repealed—Section 10-102, Chapter 264, Laws of 1963.

CHAPTER 1—PLEDGE

65-104. (8295) Repealed.

Repeal

This section (Sec. 3893, Civ. C. 1895), relating to increase of property pledged,

was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

65-107. (8298) Repealed.

Repeal

This section (Sec. 3896, Civ. C. 1895), relating to the pledge of loaned property,

was repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

65-115 to 65-126. (8306 to 8317) Repealed.

Repeal

These sections (Secs. 3904 to 3915, Civ. C. 1895; Secs. 5788 to 5799, Rev. C. 1907; Sec. 1, Ch. 102, L. 1941), relating to the

rights and duties of pledgees, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

CHAPTER 2—UNIFORM TRUST RECEIPTS ACT

(Repealed—Section 10-102, Chapter 264, Laws of 1963)

65-201 to 65-219. Repealed.

Repeal

These sections (Secs. 1 to 19, Ch. 147, L. 1945; Sec. 13, Ch. 117, L. 1961), the

Uniform Trust Receipts Act, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

TITLE 66—PROFESSIONS AND OCCUPATIONS

- Chapter 1. Architecture—regulation of practice, 66-108 to 66-110, 66-112, 66-114, 66-115.
2. Auctioneers and auction sales, 66-202, 66-203.1, 66-204.
 4. Barbers and barber shops, 66-403, 66-407 to 66-409, 66-411.
 5. Chiropractic—regulation of practice, 66-506, 66-512 to 66-514.
 6. Chiropody—regulation of practice, 66-603, 66-607, 66-608.
 8. Cosmetology (beauty shops) regulation, 66-803, 66-809, 66-815, 66-816.
 9. Dentistry—regulation of practice, 66-904 to 66-906, 66-909, 66-910, 66-913, 66-917, 66-919 to 66-923.1, 66-924, 66-925.
 10. Medicine—regulation of practice, 66-1010 to 66-1049.
 12. Nursing—regulation of practice, 66-1221, 66-1222, 66-1228, 66-1231 to 66-1234, 66-1236, 66-1237, 66-1242, 66-1243.
 13. Optometry—regulation, 66-1302, 66-1307, 66-1311, 66-1314, 66-1315.
 14. Osteopathy—regulation of practice, 66-1403, 66-1405, 66-1410.
 15. Pharmacy—regulation of sale of drugs and medicines, 66-1504, 66-1504.1, 66-1505, 66-1506, 66-1508, 66-1523, 66-1527.
 18. Public accountants—regulation, 66-1813 to 66-1843.
 19. Real Estate License Act, 66-1924 to 66-1937, 66-1938.1, 66-1939 to 66-1941, 66-1943 to 66-1946.
 21. Title abstracters—regulation, 66-2104.
 22. Veterinary medicine—regulation of practice, 66-2203, 66-2204, 66-2209 to 66-2209.2.
 23. Engineers and land surveyors, 66-2326, 66-2327, 66-2332 to 66-2334, 66-2336 to 66-2338, 66-2340, 66-2344, 66-2345, 66-2347.
 24. Plumbers, 66-2402, 66-2403, 66-2405, 66-2407, 66-2416, 66-2427.
 25. Physical Therapists Practice Act, 66-2503, 66-2508.
 26. Water Well Contractor's License Act, 66-2604 to 66-2606, 66-2615.
 27. Morticians and funeral directors, 66-2701 to 66-2717.
 28. Electrical safety law, 66-2801 to 66-2820.
 29. Masseurs—regulation and licensing, 66-2901 to 66-2914.
 30. Hearing aid dispensers, 66-3001 to 66-3023.
 31. Nursing homes and administrators, 66-3101 to 66-3114.

CHAPTER 1—ARCHITECTURE—REGULATION OF PRACTICE

- Section 66-108. Fees payable by applicants for examination—disposition of fees.
66-109. Compensation of members of board—disposition and use of funds—report.
66-110. Annual fee of licensed architects.
66-112. Revocation of license.
66-114. Plans for public buildings to have seal and signature of architect—insurance coverage.
66-115. Time schedule for payments to architects.

66-104. (3232) Repealed.

Repeal

This section (Sec. 4, Ch. 158, L. 1917), relating to the recording of architects'

certificates, was repealed by Sec. 5, Ch. 138, Laws 1967.

66-108. (3236) Fees payable by applicants for examination—disposition of fees. Applicants for examination shall pay in advance to the secretary of said board a fee of twenty-five dollars (\$25), which fee shall defray the entire expense of such candidate, before the aforesaid board of architectural examiners. Any applicant failing to pass the said examination shall be entitled to a second examination within one (1) year upon payment of five dollars (\$5) for each section of said examination.

The money received from said applicant shall be turned over to the state treasurer of the state of Montana, and shall be deposited by him in the earmarked revenue fund for the use of the board of architectural examiners.

History: En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R. C. M. 1921; amd. Sec. 140, Ch. 147, L. 1963; amd. Sec. 1, Ch. 138, L. 1967.

Amendments

The 1963 amendment deleted the words "which fee shall defray the entire expense of such candidate, before the aforesaid board of architectural examiners" from the end of the first sentence of the first paragraph; and substituted "earmarked

revenue fund for the use of the board of architectural examiners" for "architectural board fund as herein provided" at the end of the section.

The 1967 amendment rewrote the first paragraph. Prior to amendment, it read, "Applicants for examination shall pay in advance to the secretary of said board a fee of fifteen dollars. Any applicant failing to pass the said examination shall be entitled to a second examination within one year without fee."

66-109. (3237) Compensation of members of board—disposition and use of funds—report. Each member of the examining board is hereby allowed the sum of twenty dollars (\$20) per day and mileage at the rate of ten cents (\$.10) per mile while in the discharge of his actual duties.

And all fees and moneys received for licenses from practicing architects shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of architectural examiners.

The members of the board shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R. C. M. 1921; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969.

Amendments

The 1963 amendment made numerous changes in this section. For section prior to amendment, see parent volume.

The 1967 amendment increased per diem payments to members of the examining board from \$5 to \$20 per day.

The 1969 amendment substituted the reference to the reporting requirement of section 82-4002 for provisions specifying the contents of an annual report to the governor.

66-110. (3328) Annual fee of licensed architects. Every licensed architect in the state who desires to continue the practice of his profession shall annually, during the time he or she shall continue in such practice, pay to the treasurer of the state of Montana, during the month of July, a fee of twenty dollars (\$20).

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R. C. M. 1921; amd. Sec. 3, Ch. 138, L. 1967.

Amendments

The 1967 amendment increased the annual fee for architects from \$10 to \$20.

66-112. (3240) Revocation of license. The board of architectural examiners may revoke any certificate in the manner hereinafter provided if proof satisfactory to the board be presented in the following cases: (a) In case it is shown that the certificate was obtained through fraud or misrepresentation; (b) In case the holder of the certificate has been found guilty by said board or by a court of justice of any fraud or deceit in his professional practice or has been convicted of a felony by a court of justice; (c) In case the holder of the certificate has been found guilty by said board of gross incompetency or of recklessness in the planning or construction of buildings; (d) In case the holder of the certificate

has been found guilty by said board of any of the following acts which are hereby declared to constitute unprofessional conduct; (1) Willful departure in any material respect from approved plans or specifications without the consent of the owner or his duly authorized representative, (2) Willful violation of the building codes of the state or any political subdivision thereof, (3) Aiding or abetting any unlicensed person to violate or evade the provisions of this act, (4) Sealing or signing plans or specifications not prepared under his direct supervision and control.

The proceedings for revocation of a certificate shall be commenced by filing written charges against the accused with the board of architectural examiners either by the board itself or by any complainant. A copy of the charges together with a notice of the time and place of hearing shall be served on the accused at least thirty (30) calendar days in advance of such hearing. Where personal service cannot be made within the state of Montana, service may be made by publication in accordance with such rules as the board may adopt, following generally and in principle the provisions of sections 93-3013, 93-3014, and 93-3015. At the hearing, the accused shall have the right to be represented by counsel, introduce evidence, and examine and cross-examine witnesses. The secretary of the board is hereby empowered to administer oaths. The board shall make a written report of its findings and conclusions, which report, with a transcript of the entire record of the proceedings, shall be filed in the office of the secretary of state, and, if the board's findings and conclusions shall be adverse to the accused, his or her certificate shall stand revoked and annulled at the expiration of thirty (30) days from the filing of such report, unless within said period of thirty (30) days a writ of review shall be issued as hereinafter provided, in which event said certificate shall not stand suspended until the final determination of the courts upon such writ of review.

Any party aggrieved by the decision of the said board may seek a review thereof in the district court of the first judicial district of the state of Montana in the manner set forth in sections 93-9001 to 93-9011, and said court shall affirm, reverse, or modify the findings of said board in accordance with law.

The said board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The chairman and the secretary of the board shall have power to issue subpoenas, and upon the failure of any person to attend as a witness when duly subpoenaed or to produce the documents when duly directed by said board, the board shall have power to refer the said matter to the district court of the first judicial district of the state of Montana, which may order the attendance of such witness or the production of such books and papers or require the said witness to testify, as the case may be; and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpoena issued or to testify in a case pending before said court.

History: En. Sec. 12, Ch. 158, L. 1917; re-en. Sec. 3240, R. C. M. 1921; amd. Sec. 3, Ch. 149, L. 1957; amd. Sec. 4, Ch. 138, L. 1967.

Compiler's Notes

Sections 93-3013 to 93-3015, referred to in the second paragraph, were repealed by Sec. 84, Ch. 13, Laws 1961. For new provisions, see M. R. Civ. P., Rule 4.

Amendments

The 1967 amendment added subdivision (d) in the first paragraph, and inserted "(30)" after "thirty" wherever found in the second paragraph.

66-114. Plans for public buildings to have seal and signature of architect—insurance coverage. All architectural plans and specifications for public buildings of the state of Montana, or any agency thereof, or of any county, city, or school district of the state, shall bear the seal and signature of the architect responsible therefor.

All architects shall have an adequate errors and omissions insurance policy when performing any supervisory acts relating to the construction of any public buildings, works or improvements of the state of Montana or any agency thereof, or of any county, city or school district of the state and such insurance shall be in force for three (3) years after the completion of the public buildings, works, or improvements.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 220, L. 1965; amd. Sec. 1, Ch. 131, L. 1967.

Amendments

The 1965 amendment added the final paragraph.

The 1967 amendment deleted the first part of this section, which read, "No payment for professional services of any architect or architects, relating to the planning or construction of public buildings of the state of Montana, or any agency thereof, or of any county, city, or school district in the state, shall hereafter be made at any greater rate of compensation for such professional services than hereinafter set forth; and no contract for professional services of any architect or architects, relating to the planning or construction of any such public buildings, works or improvements, shall hereafter be entered into by any board, department or agency of the state of Montana, or of any county, city or school district in the state which shall provide for payment of any greater rate of compensation for such professional services than the following percentages of actual cost of construction of such buildings, works or improvements, to wit:

"A" Rate—Specialized Types: Struc-

Separability Clause

Section 6 of Ch. 138, Laws 1967 read "If any section, subdivision, sentence or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, such determination shall not affect the remaining portions of this act."

Repealing Clauses

Section 5 of Ch. 138, Laws 1967 read "That section 66-104, R. C. M. 1947, is hereby repealed."

Section 7 of Ch. 138, Laws 1967 repealed all acts and parts of acts in conflict therewith.

tures of individual design and detail requiring special skill and prolonged study such as banks, clinics, club buildings, hospitals, libraries, memorials, monuments, museums, and residences:

	Fee	Construction Cost
	8.00% of first	\$ 50,000
Plus	7.75% of next	50,000
Plus	7.50% of next	100,000
Plus	7.00% of next	300,000
Plus	6.00% of next	500,000
Plus	5.00% of all additional	

"B" Rate—Conventional Types: Structures of conventional character such as apartments, administrative buildings, bus and railway depots, churches, gymnasiums, dormitories, fire stations, nurses' homes, office buildings, restaurants, schools, shopping centers, stores and shops and theaters:

	Fee	Construction Cost
	7.50% of first	\$ 50,000
Plus	7.25% of next	50,000
Plus	7.00% of next	100,000
Plus	6.50% of next	300,000
Plus	5.50% of next	500,000
Plus	4.50% of all additional	

"C" Rate—Utilitarian Types: Structures of simplest utilitarian character such as airport hangars, armories, field houses, garages, shop maintenance buildings, mul-

tiple housing projects, stadiums, ware-	Plus	6.25% of next	50,000
houses:	Plus	6.00% of next	100,000
	Plus	5.50% of next	300,000
Fee	Plus	4.50% of next	500,000
6.50% of first	Plus	3.50% of all additional."	
Construction Cost			
\$ 50,000			

66-115. Time schedule for payments to architects. All compensation payable to architects for planning or construction of public buildings of the state of Montana, or any agency thereof, or of any county, city or school district in the state may be distributed and paid in accordance with the following schedule, to wit:

20% upon completion of studies and preliminary drawings

55% upon completion of working drawings and specifications

15% during construction, based on contract payment

10% when construction has been completed and accepted by the owner or the duly authorized agent of such owner.

History: En. Sec. 3, Ch. 190, L. 1953; amd. Sec. 2, Ch. 167, L. 1961; amd. Sec. 1, Ch. 209, L. 1965; amd. Sec. 2, Ch. 131, L. 1967.

Amendments

The 1965 amendment changed the schedule by reducing the amount payable during construction from 25% to 15% and by adding the provision for payment of 10% on completion and acceptance of construction.

The 1967 amendment deleted the first paragraph of this section, which read, "Said rate of compensation shall constitute full payment for all services and functions whatsoever of the contracting architect or architects and his and their employees and subcontractors including, but not limited to, consultation, preliminary studies, sketches, and estimates of costs, preparation of working drawings and working plans and specifications, preparation of advertisement of bids, bid forms, certificates of estimates, and inspection and supervision of construction; provided, however, that if the architect is caused extra drafting or other expense due to changes ordered by the owner, or

due to the delinquency or insolvency of the owner or contractor, or as a result of damage by fire, he shall be equitably paid for such expense and the services involved"; deleted the first sentence in the second paragraph, which read, "Three per cent (3%) of the cost of construction shall be added to the maximum rate of compensation, as above set forth for alterations to existing buildings"; substituted "to architects for planning or construction of public buildings of the state of Montana, or any agency thereof, or of any county, city or school district in the state" for "under this act" after "All compensation payable"; and deleted a proviso at the end of the section which read: "provided, the architect shall be paid at said times at the applicable rate of compensation for any work which is requested by the owner or its duly authorized agent and within the scope of his authority to the extent authorized but abandoned by such owner in whole or in part."

Repealing Clause

Section 3 of Ch. 131, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 2—AUCTIONEERS AND AUCTION SALES

Section 66-202. Auctioneer's authority from the bidder.

66-203.1. Reciprocal privileges to nonresident auctioneers.

66-204. The bond—sureties, approval and filing.

66-202. (7977) Auctioneer's authority from the bidder. An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract, as prescribed in section 66-219. [Effective January 1, 1965.]

History: En. Sec. 3161, Civ. C. 1895; re-en. Sec. 5462, Rev. C. 1907; re-en. Sec. 7977, R. C. M. 1921; amd. Sec. 11-145, Ch. 264, L. 1963. Cal. Civ. C. Sec. 2363. Field Civ. C. Sec. 1265.

Amendment

The 1963 amendment substituted the

reference to section 66-219 at the end of the section for "the chapters on sale."

66-203.1. Reciprocal privileges to nonresident auctioneers. The citizenship requirements required by the state of Montana for an auctioneer are hereby waived for the citizens of any state or states to the same extent that the home state of the applicant waives such citizenship requirements for the citizens of the state of Montana.

History: En. Sec. 1, Ch. 173, L. 1963.

Title of Act

An act to provide for reciprocal agree-

ments with other states waiving citizenship requirements for auctioneers and providing for the place of posting bond by nonresident auctioneers.

66-204. (4148) The bond—sureties, approval and filing. The bond must be conditioned to be paid to the state of Montana, with one or more sureties, in the sum of five thousand dollars, and approved by the county clerk of the county in which the auctioneer resides, and filed in his office; or if the auctioneer is not a resident of Montana, said bond shall be filed with the county clerk of the county of this state in which he carries on his principal auction business.

History: En. Sec. 3401, Pol. C. 1895; re-en. Sec. 2120, Rev. C. 1907; re-en. Sec. 4148, R. C. M. 1921; amd. Sec. 2, Ch. 173, L. 1963. Cal. Pol. C. Sec. 3285.

following the semicolon and pertaining to nonresident auctioneers.

Repealing Clause

Section 3 of Ch. 173, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Amendment

The 1963 amendment added the clause

CHAPTER 4—BARBERS AND BARBER SHOPS

Section 66-403. Licensing and registration of barbers, barber shops, barber schools and barber colleges, prohibiting barber schools and colleges from charging patrons for services.

66-407. Officers, official seal.

66-408. Compensation, funds and reports.

66-409. Powers and duties.

66-411. Fees to be paid by apprentices, students, barbers and barber shops.

66-403. (3228.21) Licensing and registration of barbers, barber shops, barber schools and barber colleges, prohibiting barber schools and colleges from charging patrons for services. A. A person is qualified to receive a certificate of registration to practice barbering only by serving as an apprentice barber and after having successfully passed an examination conducted by the board of barber examiners to determine his or her fitness to practice barbering as defined by section 66-402 of this code.

An apprentice, for the purpose of this act, is a person who receives instruction in an approved barber school, or college and from a barber authorized to practice barbering in the state of Montana.

Every apprentice must file with the board of barber examiners an application setting forth the following information:

- (a) Full name and age of apprentice
- (b) Name and place of approved barber school
- (c) Dates of attendance at approved barber school

(d) Whether or not applicant received a certificate of graduation from an approved barber school

(e) Such other information as the board deems necessary

Each apprentice applicant must successfully pass an apprentice examination conducted by the board of barber examiners and pay to the board the required fee therefor. The board of barber examiners shall then issue an apprentice barbering card which shall expire two years from the date of examination.

B. * * * [Same as parent volume.]

C. No school, or college, of barbering shall be approved by the board of barber examiners unless it teaches the curriculum of the standardized schools approved by the national education council of barber examiners. Students of said schools or colleges may, after attending such schools for a period of nine (9) months, make application to the board of barber examiners for an apprenticeship card to practice barbering under the immediate personal supervision of a licensed barber for the period of one (1) year.

Upon completion of one year of apprenticeship under the immediate personal supervision of a licensed barber, an apprentice must apply to the board of barber examiners to take the examination for a barber's certificate of registration. An apprentice may take the examination for a barber's certificate of registration as many as three times before expiration of the apprentice card provided herein. Should an apprentice fail to pass the examination for a barber's certificate of registration three times, he shall then surrender the apprentice card to the board of barber examiners and shall not be authorized to do any of the acts which constitute the practice of barbering.

D and E. * * * [Same as parent volume.]

F. Before a license is issued to conduct a barber shop, school or college which shall be established in this state on or after the date this act goes into effect, such barber shop, school or college must be inspected and approved by the board of barber examiners and shall meet with the following requirements:

(1) Must have both hot and cold running water connected with city water supply. In villages or towns where running water is not available, hot water tanks shall have not less than two (2) gallon capacity with gravity pressure. Waste water shall be disposed of through some system, carrying it away from the building. This shall be done by sewer connections, or in a manner meeting with the requirements of the state department of health rules and regulations, city ordinances, and having the approval of the city or village board of health, as required by law.

(2) The headrest of every barber chair must be equipped so that each customer will be supplied with clean fresh paper or towel before its use for any person.

(3) Must have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer.

(4) Must have sufficient number of towels so that each customer will be served with a clean laundered towel.

(5) Must be well-lighted, well-ventilated, and kept in a clean, orderly and sanitary condition at all times.

(6) Must pay to the board of barber examiners the required fee.
G. * * * [Same as parent volume.]

H. The board of barber examiners may either refuse to issue or renew, or may suspend or revoke any barber shop, or barber school or college license for any one or combination of the following causes:

(1) The violation of any of the provisions of subdivisions 1, 2, 3, 4, and 5 of subsection F of this section, subsection G of this section, and section 66-405;

(2) Conviction of a felony, shown by a certified copy of the record of the court of conviction;

(3) Gross malpractice or gross incompetency;

(4) Continued practice by a person knowingly having an infectious or contagious disease;

(5) Advertising by means of knowingly false or deceptive statements;

(6) Advertising, practicing or attempting to practice under a trade name other than one's own;

(7) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs;

(8) The commission of any of the offenses described in section 66-409.

I. * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969.

Amendments

The 1969 amendment rewrote subsections A and C and made style changes in subsections F and H. For previous text, see the parent volume.

66-407. Officers, official seal. The board shall elect a president, secretary and treasurer. It shall adopt and use a common seal for the authentication of its orders and records. The secretary shall keep a record of all proceedings of the board. At least once a month all moneys collected by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of barber examiners.

History: En. Sec. 7, Ch. 127, L. 1929; amd. Sec. 138, Ch. 147, L. 1963; amd. Sec. 23, Ch. 177, L. 1965.

Amendments

The 1963 amendment substituted the third sentence for a clause appearing at the end of the second sentence and reading, "and shall at least once a month turn over to the treasurer of the board all moneys collected."

The 1965 amendment deleted a final sentence reading, "The secretary and treasurer shall each furnish a surety bond in the sum of five thousand dollars (\$5,000.00), for the faithful performance of his duties; said bond to be filed with the secretary of state and shall be approved by the governor."

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

66-408. (3228.26) Compensation, funds and reports. Each member of the board shall receive a compensation of twenty-five dollars (\$25.00) per

day while attending board meetings together with legitimate and necessary expenses incurred in attending the meeting of said board.

The board of barber examiners shall be self-sustaining financially and no funds of the state shall be paid for the operation and maintenance of said board. The disbursements of said board shall be paid upon the warrant of the president and secretary.

The board shall make reports as provided in section 2 [82-4002] of this act.

History: En. Sec. 8, Ch. 127, L. 1929; amd. Sec. 2, Ch. 237, L. 1957; amd. Sec. 139, Ch. 147, L. 1963; amd. Sec. 2, Ch. 48, L. 1969; amd. Sec. 19, Ch. 93, L. 1969.

Compiler's Notes

This section was amended twice in 1969, once by Ch. 48 and once by Ch. 93. Neither amendatory act mentioned the other nor included the changes made by the other. Since the two amendments do not appear to conflict, except possibly in the last paragraph governing reports and since the approval date of Ch. 93 was later in time than that of Ch. 48, the compiler has made a composite section incorporating both amendments with the last paragraph being taken from Ch. 93.

Amendments

The 1963 amendment deleted a former second paragraph, now restored by Ch. 48, Laws of 1969.

Chapter 48, Laws of 1969, increased compensation of board members from \$15 to \$25 per day and restored the second paragraph deleted by the 1963 amendment.

Chapter 93, Laws of 1969 substituted the reference to the reporting requirements of section 82-4002 for provision requiring an annual report to the governor of proceedings and expenditures for the year ending the 31st day of December preceding the report.

66-409. (3228.27) Powers and duties. (1) The board of barber examiners shall conduct practical examinations of applicants for apprentice cards and for certificates of registration to practice as registered barbers, not less than four (4) times each year at such time and places as the board of barber examiners may determine. Said examinations shall cover the fundamentals of barbering, dermatology and sanitation. The board of barber examiners shall issue all apprentice cards and certificates of registration. The board of barber examiners may, at its discretion, appoint inspectors with authority to inspect barber shops, their compensation to be the same as provided for members of the board of barber examiners while engaged in said duties.

(2) and (3). * * * [Same as parent volume.]

(4) The board of barber examiners, after making such investigation, shall fix by official order the minimum price for all work usually performed in a barber shop within the city or town in which such price agreement has been signed. The board of barber examiners may upon the petition of 50% of the barbers of the said city or town readjust the minimum prices and such new prices must be approved by 75% of the barbers in the city or town. Provided, further, that this section shall not apply to students who have been enrolled less than six months in any barber college in the state of Montana or until they become apprentice barbers.

The board of barber examiners shall have authority to make necessary rules and regulations for the administration of the provisions of this act not inconsistent with this act nor the laws of the state.

History: En. Sec. 9, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; amd. Sec. 4, Ch. 150, L. 1939; amd. Sec. 3, Ch. 48, L. 1969.

Amendments

The 1969 amendment added a require-

ment for the examination of applicants for "apprentice cards" in subsection (1) and deleted "providing that any apprentice barber shall charge not less than 50% of the approved price in the said city or town" from the end of the second sentence in subsection (4).

66-411. (3228.29) Fees to be paid by apprentices, students, barbers and barber shops. (1) The fee to be paid by an apprentice for an apprentice examination and an apprentice card shall be twenty-five dollars (\$25.00). The fee to be paid by an applicant for an examination to determine his or her fitness to receive a certificate of registration to practice barbering as defined in this act, shall be twenty dollars (\$20.00), and for the issuance of said certificate an additional five dollars (\$5.00).

(2) Each person registered as a barber or barber apprentice, shall on or before the first day of July of each year pay a license fee of five dollars (\$5.00) for the renewal of his or her certificate of registration, and if any barber shall fail to have such certificate renewed on or before the first day of July of each year such barber shall upon the renewal of said certificate of registration pay a penalty, or a restoration fee of ten dollars (\$10.00), in addition to the regular fee of five dollars (\$5.00) provided for herein, and if a certificate of registration is not renewed within one year after date of expiration thereof, such barber shall not be entitled to have such certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for by this section. Provided, further, however, that physically handicapped men and women, trained for the barber profession by the state bureau of civilian rehabilitation and certified by that department as having successfully completed a nine (9) months' course in a reputable barber college will not be required to pay any fees, but will for a period of one (1) year immediately following their training be exempted from all except the sanitary provisions of the barber act, or any of its amendments, and provided, further, that no other or additional license, or fee, shall be imposed upon barbers, or barber apprentices, by any municipality or other subdivision of the state of Montana.

(3) In addition to the fees and charges now provided by existing law, all barber shops heretofore established, and which have been under the inspection of the board of barber examiners, shall pay an annual license fee of three (\$3.00) dollars. Barber shops hereafter established shall pay an initial inspection fee of fifteen (\$15.00) dollars for the first year or portion thereof, and shall pay an annual license fee of three (\$3.00) dollars.

(4) All barber shops, schools or college licenses shall expire on the first day of July of each year, following the issuance of said license, and every owner or manager of a barber shop, school or college which continues in active operation shall annually, on or before July first renew his barber shop, school or college license and pay the required fee. For the first year this act is in effect, all licenses which expire on

the thirty-first day of May shall be deemed in force until the first day of July.

Every barber shop which shall fail to have such license renewed on or before the first day of July of each year shall upon the renewal thereof pay a penalty, or a restoration fee, of ten (\$10.00) dollars, and each barber school or college which shall fail to have such license renewed on or before the first day of July of each year shall upon the renewal thereof pay penalty, or restoration fee, of fifty-five (\$55.00) dollars.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969.

nations of subsections from letters to numbers and rewrote the section to increase the fees charged for examinations, barber's licenses and barber shop licenses and to change the dates of renewal of such licenses. For prior text, see parent volume.

Amendments

The 1969 amendment changed the design-

CHAPTER 5—CHIROPRACTIC—REGULATION OF PRACTICE

Section 66-506. Examinations—subjects embraced in.

66-512. Renewal of license.

66-513. Disposition of fees—receipts and disbursements—reports—per diem and mileage.

66-514. Dismissal of members of board.

66-506. (3143) Examinations — subjects embraced in. Examinations for license to practice chiropractic shall be made by said board according to the method deemed by it to be the most practicable and expeditious to test the applicant's qualifications. Such application shall be designated by a number instead of the applicant's name, so that the identity will not be discovered or disclosed to the members of the board until after the examination papers are graded.

All examinations shall be made in writing, the subjects of which shall be as follows: Anatomy, physiology, symptomatology, diagnosis, chiropractic orthopedy, principles of chiropractic and adjusting, sanitation and hygiene, urinalysis, gynecology, and palpation. Additional subjects may be prescribed from time to time by the board to meet new conditions. A license shall be granted to all applicants who shall correctly answer seventy-five per centum of all questions asked, and if any applicant shall fail to answer correctly sixty per centum of the questions on any branch of said examination, he or she shall not be entitled to a license.

The board may accept the grades an applicant has received in the written examinations given by the national board of chiropractic examiners and may grant a license without further written examination to an applicant who holds a valid certificate from the national board of chiropractic examiners, provided such applicant meets the other requirements of this chapter and satisfactorily passes a practical examination before the board.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3143, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1967.

Amendments

The 1967 amendment added the third paragraph of this section.

Repealing Clause

Section 3 of Ch. 36, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 2 of Ch. 36, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 14, 1967.

66-512. (3149) Renewal of license. One of the purposes of this act is to require each licensee to keep abreast of and informed about the developments and advances in the science of chiropractic, and, therefore, each license shall expire on the first day of September in each year, and shall be renewed then or thereafter, by the board, upon payment of a renewal fee of not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00) as set by the state board of chiropractic examiners, and the presentation of evidence satisfactory to said board that the licensee, in the year preceding the application for renewal, attended an educational program for chiropractors conducted by any school of chiropractic licensed to operate in the state of its location, or an educational program conducted by the state association of licensed chiropractors of any state, or an educational program approved by the state board of chiropractic examiners; provided, that the board may grant renewals, but not consecutive renewals, upon a showing satisfactory to said board that attendance upon said educational programs was unavoidably prevented, provided that new licensees during the six (6) months preceding said September first, by examination, shall be granted renewal licenses without attending said educational programs, provided, that a failure to renew a license shall not prevent a licensee from subsequently applying for and receiving a license, as if there were no lapse of time between the expiration of the old license, and the granting of a renewal license; provided, that nothing herein shall prevent a renewal of said license if in said preceding year for any reason, at least one of the said educational programs is not conducted in the state of Montana.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R. C. M. 1921; amd. Sec. 2, Ch. 129, L. 1933; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965.

Amendment

The 1965 amendment increased the maximum renewal fee from \$15 to \$25 and substituted "an educational program for

chiropractors conducted by any school of chiropractic licensed to operate in the state of its location, or an educational program conducted by the state association of licensed chiropractors of any state, or an educational program approved by the state board of chiropractic examiners" immediately before the first proviso for "at least one of the two-day educational programs as conducted by the Montana chiropractic association."

66-513. (3150) Disposition of fees—receipts and disbursements—reports—per diem and mileage. All examinations and renewal fees received by the state board of chiropractic examiners under this act shall be paid to the secretary-treasurer of said board, who shall at the end of each month deposit the same with the state treasurer, and the said state treasurer shall place said money so received in the earmarked revenue fund for the use of the state board of chiropractic examiners.

The secretary-treasurer shall keep a true and accurate account of all

funds received and all vouchers issued by the board; and shall report as provided in section 2 [82-4002] of this act.

The members of said board shall receive a per diem of twenty-five dollars (\$25) for each day during which they shall be actually engaged in the discharge of their duties, and mileage at the rate of ten cents (\$.10) per mile for each mile necessarily traveled in going to and from any meeting of said board.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R. C. M. 1921; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969.

Amendments

The 1963 amendment substituted "the earmarked revenue fund for the use of the state board of chiropractic examiners" for "a special fund of the state board of chiropractic examiners and shall pay the same out in warrants drawn by the auditor of the state thereof, upon vouchers issued and signed by the president and the secretary-treasurer of said board" at the end

of the first sentence of the first paragraph; deleted from the first paragraph a second sentence which read: "Said money so received and placed in said fund may be used by the state board of chiropractic examiners in defraying their expenses in carrying out the provisions of this act"; and deleted a former fourth paragraph which read: "Such per diem and mileage and such other incidental expenses necessarily connected with said board shall be paid out of the fund of the state board of chiropractic examiners, and not otherwise."

The 1969 amendment substituted the reference to the reporting requirements of section 82-4002 for provision requiring an annual report to the governor.

66-514. (3151) Dismissal of members of board. Upon sufficient proof to the governor of the inability or misconduct of a member of the board, said member shall be dismissed, and the governor shall appoint as his successor some licensed chiropractor practicing in this state, who shall be a graduate of a different school than those represented on the board.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3151, R. C. M. 1921; amd. Sec. 24, Ch. 177, L. 1965.

sentence reading, "The treasurer of said board shall give bond in such sum and with such sureties as the board may deem proper."

Amendment

The 1965 amendment deleted a first

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

CHAPTER 6—CHIROPODY—REGULATION OF PRACTICE

Section 66-603. Chiroprody examiners—examinations—qualifications—schools—fees—nonresident practitioners.

66-607. Disposal of moneys collected.

66-608. Compensation of examiners—expenses.

66-603. (3154.3) Chiroprody examiners—examinations—qualifications—schools—fees—nonresident practitioners. (1). * * * [Same as parent volume.]

(2) Examinations shall be held semiannually at such places and time as the state board of chiroprody medical examiners shall direct. On and after the date of the taking effect of this act, all persons who may wish to begin practice of chiroprody in this state, shall make application upon a blank form authorized and furnished by said state board of medical examiners, for a license to practice chiroprody. This application shall be granted to such applicants, after they shall have furnished satisfactory

proof of being at least twenty-one (21) years of age, of good moral character, of having attained high school graduation or its equivalent and of having had at least two years of instruction in an accredited school of chiropody recognized as being in good standing by the Montana board of chiropody medical examiners, but after June 1st, 1941, no school of chiropody shall be accredited by said board which does not require for graduation four (4) years of instruction in the study of chiropody. All chiropodists, actively engaged in the practice of chiropody one (1) or more years and licensed by the state board of medical examiners, prior to April 1st, 1939, whether meeting these requirements or not, shall, upon furnishing proof thereof to said board of chiropody medical examiners be entitled to a license without examination. A license without written examination may be issued to chiropodists of other states maintaining equal statutory requirements for the practice of chiropody and extending the same reciprocal privilege to this state provided further that they have had a valid license for at least two years in that state prior to filing for reciprocal privilege, and by payment of fifty dollars (\$50.00) to the secretary of the board of medical examiners.

History: En. Sec. 3, Ch. 2, L. 1923; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the secretary of the board of medical examiners" for "board of medical examiners fund" at the end of the section.

66-607. (3154.7) Disposal of moneys collected. All fees and licenses shall be paid to and collected by the secretary of the state board of medical examiners, who shall at least quarterly each year pay the same to the state treasurer, and the state treasurer shall receive and accept such moneys and credit same to the earmarked revenue fund for the use of the state board of medical examiners.

History: En. Sec. 7, Ch. 2, L. 1923; amd. Sec. 130, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund for the use of the state board of medical examiners" for "a

special fund to be known and designated as board of medical examiners fund and such fund shall not be used or expended for any purpose other than as provided for in section 66-1009" at the end of the section.

66-608. (3154.8) Compensation of examiners—expenses. Each member of the board of examiners, except the secretary and the physician members who are otherwise paid for the performance of their duties as medical examiners, shall receive for his services the sum of five dollars (\$5.00) per diem and necessary traveling and incidental expenses, while the secretary shall receive his necessary expenses for services which cannot be performed at the capitol. All printing, postage and other contingent expenses, necessarily incurred, shall be paid by the state board of medical examiners in the same manner as other expenses of the state board of medical examiners.

History: En. Sec. 8, Ch. 2, L. 1923; amd. Sec. 132, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words "out of the funds created by the payment

of fees by applicants for licenses" following "receive for his services" in the first sentence; substituted "capitol" for "capital" at the end of the first sentence; and substituted "by the state board of medical examiners" in the third sentence for

"from said funds, and all expenses shall be itemized, verified, audited, upon presentation by the state board of medical ex-

aminers, and a warrant drawn therefor by the state auditor on the board of medical examiners fund."

CHAPTER 8—COSMETOLOGY (BEAUTY SHOPS) REGULATION

Section 66-803. Requirements for practicing or teaching cosmetology or operating a school of cosmetology.

66-809. Compensation of members of board—deposit of receipts in state treasury.

66-815. **Fees.**

66-816. Duration and renewal of licenses and certificates—delinquent renewal fee.

66-803. (3228.3) Requirements for practicing or teaching cosmetology or operating a school of cosmetology. Before anyone may practice or teach cosmetology, or any person, firm, or copartnership, or corporation may operate a school of cosmetology, such person, firm, or copartnership or corporation must obtain a license or certificate of registration from the state board as hereinafter provided. To be eligible to take the examination to practice cosmetology the applicant must not be less than eighteen (18) years of age and a graduate of the eighth grade school and must be of good moral character. Such applicant must have completed a continuous course of study of at least two thousand (2,000) hours in a registered beauty school, which course of study has been distributed over a period of not less than ten (10) months or more than twelve (12) months, and has received a diploma from said beauty school, or must have completed the course of study in cosmetology prescribed by the state board of education, ex officio regents of the university of Montana, for northern Montana college. Such person so qualified must file with the secretary of the state board, a written application to take such examination accompanied by a health certificate issued by a registered, licensed physician on a form supplied by the state board, and shall deposit with the secretary of the said board, the required examination fee and pass an examination as to his or her fitness to practice cosmetology.

Before an applicant may taken an examination to obtain a license as a teacher of cosmetology, he must:

(1) Be twenty-one (21) years of age or older.

(2) Be a graduate of high school or possess an equivalent of a high school diploma recognized by the state superintendent of public instruction.

(3) Meet the following requirements:

(a) He must have an operator's license to practice cosmetology issued by the state of Montana, been actively engaged as a beauty operator for one (1) continuous year immediately prior to taking the examination, and have received a diploma from a registered school of cosmetology approved by the board certifying satisfactory completion of five hundred (500) hours of student teacher training; or

(b) He must have been actively engaged as a beauty operator for three (3) continuous years immediately prior to taking the teachers' examination.

The applicant must qualify by filing an application as prescribed by the board and by taking and passing the examination prescribed and given by the board. The license must be renewed annually as provided in section 66-816, R. C. M. 1947.

Anyone failing twice to pass an examination may not apply to retake the examination:

(1) Sooner than six (6) months after the date of the second failure; or

(2) Until he has taken two hundred (200) hours additional teacher training at a registered school of cosmetology approved by the board.

Provided, further, the board may grant to graduates of registered schools of this state upon the payment of a fee of two dollars (\$2.00) a temporary license authorizing such graduates to practice as an operator under the supervision of a licensed cosmetologist, in the practice of hairdressing and beauty culture, for a period of not to exceed ninety (90) days, or until the next examination is held by the board. No such temporary license shall be issued except upon the presentation by the applicant of a certificate of graduation from a registered school of the state of Montana, and such temporary licenses shall not be renewable.

No person, firm or copartnership, or corporation shall operate a school for the purpose of teaching cosmetology for compensation unless a certificate of registration has been first obtained from the state board. Application for such certificate shall be filed with such board on such form as the board shall prescribe.

No teacher or student teacher shall be permitted to practice cosmetology on the public in a school. Any school that enrolls student teachers for a course of student teacher training shall not have at any one time more than one (1) student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

No school for teaching cosmetology shall be granted a certificate of registration unless it complies, or can comply, with the following requirements:

(1) to (9). * * * [Same as parent volume.]

(10) The board may, by ruling, establish suitable curriculum for teachers' training in registered schools of cosmetology.

If a licensee shall contract a communicable disease, endangering the public health, the board shall, upon proof of same, cancel or suspend his or her license until such time as said licensee can secure a physician's certificate showing that such licensee is free from a communicable disease.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969.

Amendments

The 1969 amendment rewrote the provisions relating to qualifications for taking examinations and inserted the provisions relating to practice and employment of

student teachers in schools and authority of the board to establish curriculum for teachers' training. For prior text, see parent volume.

66-809. (3228.9) Compensation of members of board—deposit of receipts in state treasury. Each member of the board shall receive, as compensation for his or her services, the sum of twenty dollars (\$20) for each day's actual attendance at board meetings, not to exceed three (3) consecutive days, and each member shall be reimbursed for his or her expenses necessarily incurred in the performance of his or her duties hereunder. All receipts of the board shall be deposited in the state treasury to the credit of the earmarked revenue fund for the use of the state examining board of cosmetology. The secretary of the state board shall receive an annual salary to be fixed by the board, and his or her necessary expenses actually incurred in the performance of official duties. Such secretary shall not receive, in addition to the salary herein provided, the per diem herein provided for attendance of board meetings. The state board may make reasonable provisions, for its expenses in the enforcement of this act, and for compensation and expenses of examiners.

History: En. Sec. 9, Ch. 104, L. 1929; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967.

Amendments

The 1963 amendment substituted the second sentence for a sentence reading, "All such compensation and necessary expenses shall be paid by the board out of the funds received by it and no part shall be paid by the state"; and deleted from

the end of the section a proviso reading, "provided, however, that no payments shall be made by the board except upon a verified claim filed with the board and approved by the majority thereof, and by warrants signed by the president and secretary-treasurer of the board."

The 1967 amendment increased the compensation of members of the state examining board of cosmetology from \$10 to \$20 per day, and inserted "(3)" after "three" in the first sentence.

66-810. (3228.10) Repealed.

Repeal

This section (Sec. 10, Ch. 104, L. 1929; Sec. 9, Ch. 222, L. 1939), relating to the bond of the secretary-treasurer of the state examining board of cosmetology,

was repealed by Sec. 51, Ch. 177, Laws 1965. For new provisions relating to bonds for state officers and employees, see sec. 6-105 et seq.

66-815. (3228.15) Fees. Each applicant for examination to practice or teach shall pay, at the time of such application a fee of ten (\$10.00) dollars. Each person practicing cosmetology as an operator shall pay a fee of three (\$3.00) dollars for the issuance of a license, and the further fee of three (\$3.00) dollars annually for each renewal thereof. Each applicant for a manager-operator license shall pay a fee of five (\$5.00) dollars, for the issuance of such a license and the further sum of five (\$5.00) dollars annually for each renewal thereof. A manager-operator or teacher of cosmetology who is retired or no longer active in any capacity in a cosmetological establishment or beauty school may obtain an inactive license upon the payment of an annual fee of three (\$3.00) dollars. Every person, firm, copartnership or corporation originally opening a cosmetological establishment shall pay the sum of five (\$5.00) dollars for the issuance of the original license. The sum of three (\$3.00) dollars annually shall be paid by each existing cosmetological establishment and for each renewal of cosmetological establishment license. Each person

teaching cosmetology shall pay a fee of five (\$5.00) dollars, for the issuance of a license, and the further sum of five (\$5.00) dollars annually for each renewal thereof. Every person, firm, copartnership, or corporation, owning, operating or conducting a school of cosmetology shall pay the sum of twenty-five (\$25.00) dollars for a certificate of registration therefor, and pay a further sum of twenty-five (\$25.00) dollars annually for each renewal thereof. Each applicant for apprentice license shall pay an annual fee of three (\$3.00) dollars. Each applicant for itinerant license as a cosmetologist, shall pay a fee of twenty-five (\$25.00) dollars. Such license fees shall be paid annually in advance to the secretary of the board. No other or additional license or fee shall be imposed by any municipal corporation or any other political subdivision of the state of Montana for the practice or teaching of cosmetology.

History: En. Sec. 15, Ch. 104, L. 1929; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. [Sec. 1,] Ch. 131, L. 1963.

Amendment

The 1963 amendment inserted the fourth, fifth, and sixth sentences.

66-816. (3228.16) Duration and renewal of licenses and certificates—delinquent renewal fee. Licenses and certificates shall be issued for no longer than one (1) year. All licenses and certificates shall expire on the 31st day of December next succeeding unless renewed for the next year. Licenses and certificates may be renewed by application made prior to the 31st day of December of each year, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under special rules adopted by the board.

In addition to the foregoing requirements for renewal persons applying for the renewal of teachers' licenses must have fulfilled the following additional requirements:

(a) During every year each active teacher, either full time or part time, must have successfully completed thirty (30) hours professional teacher training at a school approved by the board as a prerequisite to the renewal of the teacher's license.

(b) Persons holding a teacher's license, but not actively engaged either full time or part time in teaching cosmetology during the preceding year, may renew such license by paying the fee therefor.

(c) Persons holding a teacher's license but not actively engaged in teaching cosmetology either full time or part time for the preceding year or longer and wishing to resume active teaching of cosmetology must successfully complete thirty (30) hours professional teachers' training at a school approved by the board before resuming active teachers' training. Provided, however, that the foregoing provisions shall not prevent the board, under regulations as it may prescribe, from permitting any person holding a teacher's license and not actively engaged either full time or part time in teaching cosmetology from teaching as a substitute for an active teacher.

A fee of two dollars and fifty cents (\$2.50) shall be charged in addition to other fees fixed by law for renewal applications of licenses and certificates made after the 31st day of December of each year, said board

shall notify all license holders of expiration date of license not less than thirty (30) days before such expiration date, and call attention to penalty imposed for failure to renew license by date of expiration.

History: En. Sec. 16, Ch. 104, L. 1929; amd. Sec. 13, Ch. 222, L. 1939; amd. Sec. 1, Ch. 115, L. 1961; amd. Sec. 1, Ch. 132, L. 1967.

Amendments

The 1967 amendment inserted the provisions for additional requirements for the renewal of licenses.

CHAPTER 9—DENTISTRY—REGULATION OF PRACTICE

- Section 66-904. Meetings—notice—quorum—funds—duties—report.
 66-905. Dentistry examinations—application—contents—fees—undergraduate examination—regulations for examinations—notice—scope of examination—dentist certificates—fee—form—retention and inspection of examination papers.
 66-906. Certificate to be registered in counties where practicing—replacing lost certificates—admission of dentists from other states—reciprocity—annual license fee—inactive fee—due date of annual fee—revocation of license for failure to pay.
 66-909. Compensation and expenses allowed board members—limitation on duration of examination meetings—employment of counsel to enforce act—secretary-treasurer's compensation—disbursement of funds.
 66-910. Practice of dentistry defined—persons conducting business through licensed dentist—exceptions.
 66-913. Revocation or suspension of license—grounds—conviction of crime—renting or loaning license—unprofessional conduct—proceedings for revocation or suspension.
 66-917. Publishing professional cards not unprofessional conduct, when.
 66-919. Practicing dentistry without certificate, penalty for—disposition of fines.
 66-920. Affiliation with national association authorized—delegate—expenses allowed.
 66-921. Dental hygiene defined—dental hygienists—qualifications—examination—fee—registration—certificate form—re-examination—powers and limitations—revocation of license.
 66-922. Annual license fee for dental hygienists—revocation of license.
 66-923. Admission of dental hygienists from other states—unlawful to practice without license—licenses for practicing hygienists—reciprocity.
 66-923.1. Auxiliary personnel—employment, duties and limitations.
 66-924. Recognition of dental schools.
 66-925. Citation of act—regulatory board.

66-904. (3115.4) Meetings — notice — quorum — funds — duties — report. (1) The board shall meet at least once in each year or oftener at any point in the state of Montana at the call of the president and the secretary-treasurer. Five days' notice must be given by the secretary-treasurer to all board members of the time and place of the meeting of said board. Three members of said board shall constitute a quorum for the transaction of business and its proceedings shall be open to public inspection in all cases of public interest. All moneys received by the board and/or its officers for the board, shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of dental examiners.

(2) The board shall report as provided in section 2 [82-4002] of this act.

The secretary-treasurer shall keep a complete record of all meetings and proceedings of which records the secretary-treasurer shall be custodian, and he shall keep a true and complete account of all moneys re-

ceived and disbursements made by the board and by him as such officer. Before September first of each even-numbered year, the board shall submit a written report to the governor providing to him the information required by law. A copy of such report shall be mailed to every registered dentist in the state of Montana.

History: En. Sec. 4, Ch. 48, L. 1935; amd. Sec. 147, Ch. 147, L. 1963; amd. Sec. 25, Ch. 177, L. 1965; amd. Sec. 21, Ch. 93, L. 1969; amd. Sec. 1, Ch. 352, L. 1969.

Compiler's Notes

This section was amended twice in 1969, once by Ch. 93 and once by Ch. 352. Neither amendatory act mentioned the other nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments.

Amendments

The 1963 amendment substituted the words "deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of dental examiners" for "paid to the secretary-treasurer of the board, who shall be the custodian of the board's receipts and funds, and all disbursements shall be made by him in accordance with this act, and the directors of the board" at the end of the first paragraph.

The 1965 amendment deleted "shall give bond in such amount as the board may from time to time require, which bond shall be approved by the board, and he" after "The secretary-treasurer" at the beginning of the present third paragraph.

Chapter 93, Laws of 1969, inserted subsection numbers (1) and (2) before the first and second paragraphs, inserted the second paragraph relating to the reporting requirements of section 82-4002, and deleted provisions at the end of the third paragraph relating to the secretary-treasurer's preparation of an annual "account" to be delivered to the governor and mailed to all registered dentists.

Chapter 352, Laws of 1969, deleted a third sentence in subsection (1) which read: "The regular annual meeting of the board shall be held on the second Monday in July of each year" and substituted the last two sentences of the third paragraph for the provisions deleted by the amendment by Ch. 93.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

66-905. (3115.5) Dentistry examinations — application — contents — fees — undergraduate examination — regulations for examinations — notice — scope of examination — dentist certificates — fee — form — retention and inspection of examination papers. (1) Any person desiring to commence the practice of dentistry in the state of Montana after this act takes effect, shall file in his full name, an application for examination, with the secretary-treasurer of the state board of dental examiners at least twenty (20) days before the date set by the board for the commencement of such examination, and at the time of making such application the applicant shall (a) pay to the secretary-treasurer of the board a fee of fifty dollars (\$50), (b) shall furnish the board with at least three (3) satisfactory affidavits of good moral character, (c) shall present to said board his diploma or satisfactory evidence of having graduated from a recognized dental school or college, which must have been approved by said board, and (d) shall furnish the board a recent photograph of the applicant.

(2) The board may, in its discretion, permit any dental student who shall have successfully completed his junior year in a recognized dental school, and who files proof satisfactory to the board that he has the preliminary education in this section described, to take written examination in such subjects as he has completed, and all satisfactory grades there secured shall be credited upon the final examination of

such student. The board shall require a fee of fifty dollars (\$50) for such examination, which fee shall apply on the final examination to be taken by such applicant.

(3) The board shall adopt a uniform code of rules and regulations within the limitations of this act, governing the matter of examinations for license to practice dentistry in the state of Montana, which examinations shall be open to any applicant meeting the requirements of this act, and shall also provide in such code for giving reasonable notice of the time and place where examinations shall be held. An examination shall be held at least once a year.

(4) The examination hereinabove referred to shall be practical in character and sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics and endodontics, and any additional subjects pertaining to dental service. Said written examination may be supplemented by oral examinations. Demonstrations of the applicant's skill in operative and prosthetic dentistry shall also be required. Said examination shall be conducted under oath or affirmation before said board, and any member of said board is empowered to administer the necessary oath or affirmation. The state board of dental examiners may recognize a certificate granted by the national board of dental examiners in lieu of or subject to such examinations as the state board may require.

(5) All applicants successfully passing such examination shall be registered as licensed dentists in the board register and, upon payment of an additional fifteen dollars (\$15) shall receive a certificate signed by the president, secretary, and other members of said board, in substantially the following form, to wit:

"This is to certify that _____ is hereby licensed to practice dentistry in the state of Montana. This certificate must be filed for registration in the office of the county clerk of any county in which the dentist holding such certificate desires to practice, and it is unlawful for him to practice dentistry in any county in which said certificate is not filed for registration.

Dated at _____, this _____ day of _____, 19__."

Examination papers of any applicant shall be retained two (2) years by the secretary-treasurer of the board and may then be destroyed, and while so retained shall be open to inspection only by board members, the applicant, or by some person appointed by such applicant to examine same, or by a court of competent jurisdiction in a proceeding where the question of the contents of such paper or papers is properly involved.

(6) No person shall be qualified to be licensed to practice dentistry in this state or to have issued to him a certificate to practice dentistry in this state who is not a citizen of the United States of America.

(7) Any applicant failing to pass his first examination before the board may, at any subsequent meeting of said board held for the purpose of examining candidates, if otherwise qualified, take subsequent examinations upon payment of the fee of twenty-five dollars (\$25) for each such examination.

History: En. Sec. 5, Ch. 48, L. 1935; amd. Sec. 1, Ch. 38, L. 1941; amd. Sec. 1, Ch. 34, L. 1951; amd. Sec. 2, Ch. 352, L. 1969.

Amendments

The 1969 amendment deleted "or her" and "or she" where the references appeared throughout this section; in subsections (1) and (2), raised the examination fee from \$25 to \$50; in subsection (3), added the last sentence requiring examinations at least once a year; in subsection

(4), deleted "any or all of the following subjects:" after "questions on" and substituted "pharmacology" for "materia medica" and "orthodontics and endodontics" for "and orthodontia"; in subsection (5), the first paragraph, substituted "applicants" for "persons," deleted "and hereinabove provided" after "board register," reduced the additional fee from \$25 to \$15, inserted ", and other members" before "of said board"; in the second paragraph, deleted "himself" after "the applicant"; and added subsection (7).

66-906. (3115.6) Certificate to be registered in counties where practicing—replacing lost certificates—admission of dentists from other states—reciprocity—annual license fee—inactive fee—due date of annual fee—revocation of license for failure to pay. (1) The certificate in this act provided for shall entitle the holder thereof to practice dentistry in any county in the state of Montana, provided such certificate shall first be filed for registration and registered in the office of the county recorder of the county in which such holder desires to practice, and nothing herein contained shall be construed to permit any holder of any certificate to practice in any county in this state unless such certificate shall have been first registered in the office of the recorder of such county as herein provided; provided further that any such holder of a certificate may practice in more than one or in any number of counties in this state on having such certificate registered in each of such counties in which such holder desires to practice. Said board of dental examiners shall, upon satisfactory proof of the loss of any such certificate issued under the provisions of this act, issue a duplicate certificate in place thereof, and a fee of ten dollars (\$10) shall be charged for issuing such certificate.

(2). * * * [Same as parent volume.]

(3) Every licensed dentist practicing within the state of Montana shall pay in each and every year, on or before the first day of March, to the secretary-treasurer of the board, as a license fee for the year, the sum of ten dollars (\$10), provided, however, that the board shall have the power to increase or decrease the annual license fee so as to maintain in the earmarked fund, at all times, an amount to be known as the emergency fund to be used for the purpose of administering, policing and enforcing the provisions of this act, it being the intention hereof that the emergency fund be maintained at an approximate level of two thousand five hundred dollars (\$2,500). Notice of such change in the amount of license fees shall be given to each dentist registered in the state by the secretary-treasurer.

(4) In the event any registered dentist absents himself from the state for a period of one or more years, or does not engage in active practice within the state of Montana, he may continue his license in good standing by the payment of ten dollars (\$10) each year, or at the discretion of the board, he may be reinstated upon the payment of a fee of ten dollars (\$10) for each year's absence. Such annual payments shall be made prior to March first in each and every year, and receipt or certificate therefor shall be issued by the secretary-treasurer of the board.

(5) In case of a default in payment of annual license fee by any dentist, his license shall be revoked by the board upon thirty days' notice given to the delinquent of the time and place of considering such revocation. A registered letter addressed to the last known address of the party failing to comply with this requirement, as such address appears upon the records of the board, shall constitute sufficient notice of revocation of license, but no license shall be revoked for such nonpayment if the dentist so notified shall pay such license fee plus the late payment penalty of three dollars (\$3) before or at the time fixed for consideration of revocation. The board is hereby authorized to maintain in the name of the state of Montana, a suit to collect all license fees and penalties applicable and to recover from the delinquent dentist the cost of any such action, including reasonable attorneys' fees.

(6) No license fee or tax shall be imposed on dentists by a municipality or any other subdivision of the state.

History: En. Sec. 6, Ch. 48, L. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969.

Amendments

The 1963 amendment deleted from the end of the first sentence of subsection (3) a proviso which read: "provided, however, that the board shall have the power to reduce the annual license fee of seven dollars (\$7.00) to the sum of one dollar (\$1.00) or more (but not in excess of seven dollars (\$7.00) per year when the amount of the balance of cash in the hands of the secretary-treasurer reaches the sum of eight thousand dollars (\$8,000.00), it being the intent of this act that said fund shall be maintained at an approximate level of eight thousand dollars (\$8,000.00)"; deleted from subsection (3) a second sentence which read, "Notice of such change in the amount of dues shall be given to each dentist registered in the state by the secretary-treasurer"; and made minor changes in phraseology.

The 1969 amendment, in subsection (1),

raised the fee for duplicate certificates from \$5 to \$10, deleted the last sentence which read, "Any person failing to pass his first examination before such board, may demand a second examination at any subsequent meeting of said board held for the purpose of examining candidates and no fee shall be charged for any subsequent examination"; rewrote subsection (3), raising the annual license fee from \$7 to \$10, deleting a \$3 penalty for late payment and inserting provisions empowering board to increase or decrease fees so as to maintain a \$2,500 emergency fund at all times; divided former subsection (4) into present subsections (4) and (5); in the first sentence of subsection (4) substituted "ten dollars (\$10)" for "five dollars (\$5)" in two places, in the second sentence, substituted "March" for "May"; in subsection (5), deleted "together with an additional delinquency penalty of five dollars (\$5.00); provided further that said board may collect any such dues by law" from the end of the second sentence, added the last sentence; and added subsection (6).

66-909. (3115.9) Compensation and expenses allowed board members—limitation on duration of examination meetings—employment of counsel to enforce act—secretary-treasurer's compensation—disburse-

ment of funds. Out of the funds derived from the fees and dues herein provided for, each member of the board shall be reimbursed as follows:

(1) Fifteen dollars (\$15) per day for each day traveling to and from any meeting and while in actual attendance at any meeting of the board and for each day actually engaged in the duties of his office.

(2) For such expenses and travel as are authorized under the provisions of sections 59-538 and 59-801, R. C. M. 1947, as the same sections are now or may be amended from time to time.

(3) For first class railroad and Pullman fares actually incurred to and from his place of residence to the place of any meeting. Meetings held for the purpose of examining candidates for license to practice dentistry in Montana shall in no case exceed six days. Said board may, if by it deemed advisable, with the consent of the county attorney of any county, employ and compensate special counsel to assist in the prosecution in the courts of such county and in the supreme court of this state, of any offense alleged to have been committed under the provisions of this act in such county. The secretary-treasurer of the board shall receive such reasonable compensation for his services as said board may fix. All moneys received from any source in excess of expenses and salaries above provided for, shall be held by the secretary-treasurer of the board as a special fund for meeting the expenses of the board, the proper administration of this act and for such educational purposes as may be deemed wise by the board. The state treasurer and state controller, upon the written request of the board, shall set aside in a separate account in the earmarked revenue fund, the emergency moneys provided under section 66-906, R. C. M. 1947, as may be available and requested. Said moneys will be expended only when the board determines that an emergency exists requiring an expenditure therefrom. The state treasurer upon written request of the board, shall draw warrants on such earmarked fund to cover such emergency expenses incurred by the board in administering, policing and enforcing this act.

History: En. Sec. 9, Ch. 48, L. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969.

Amendments

The 1963 amendment at the beginning of the section deleted the words "Out of the funds coming into the possession of the board from the fees and dues charged as hereinabove provided"; deleted the words "out of said fund" which followed the words "employ and compensate" in the third sentence; deleted a fourth sentence which read "Such expenses shall be paid from the fees received by the board under the provisions of this act"; and deleted from the end of the section two sentences which read "All moneys received from any source in excess of expenses and salaries above provided for, shall be held by the secretary-treasurer of said board as a special fund for meeting the expenses of

said board, the proper administration of this act and for such educational purposes as may be deemed wise by said board. All moneys on hand shall be invested or deposited under the direction of the board, and all moneys received by the board under this act shall be and remain subject to its exclusive custody and control."

The 1969 amendment substituted the introductory sentence, subdivisions (1) and (2) and the first sentence of subdivision (3) for a former first sentence which read, "The sum of fifteen dollars (\$15.00) per day for each day actually engaged in the duties of his office and the amount of the actual railroad and Pullman fares to and from his place of residence to the place where the meetings of said board are held, shall be paid to each member of said board attending such meetings"; and added the last four sentences to subdivision (3).

66-910. (3115.10) Practice of dentistry defined—persons conducting business through licensed dentist—exceptions. Any person shall be deemed to be practicing dentistry within the meaning of this act who performs, or attempts, or advertises to perform, or causes to be performed by the patient or any other person, or instructs in the performance of, any dental operations or oral surgery or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid, or to be paid, directly or indirectly, to himself or to any other person or agency; or who is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed; or who directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces or repairs any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth; or who places such appliance or structure in the human mouth or attempts to adjust the same; or who advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth; or who diagnoses or professes to diagnose, prescribes for or professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth or jaws, or adjacent structure; or who extracts or attempts to extract human teeth, or corrects or attempts or professes to correct malpositions of teeth or of the jaw; or who gives, or professes to give interpretations or readings of dental roentgenograms; or who administers an anesthetic of any nature in connection with a dental operation; or who uses the words "dentist," "dental surgeon," "oral surgeon," the letters "D. D. S.," "D. M. D.," or any other words, letters, title, or descriptive matter which in any way represent him as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury or physical condition of human teeth or jaws, or adjacent structures; or who states, or advertises or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that he can perform or will attempt to perform dental operations or render a diagnosis in connection therewith or who engages in any of the practices included in the curricula of recognized dental colleges. Provided, however, that a dental laboratory or dental technician shall not be deemed to be practicing dentistry within the meaning of this act when engaged in the construction, making, alteration or repairing of bridges, crowns, dentures, or other prosthetic appliances or surgical appliances or orthodontic appliances if the casts or models or impressions upon which such work is constructed shall have been made by a regularly licensed and practicing dentist and all such crowns, bridges, dentures or prosthetic appliances or surgical appliances or orthodontic appliances shall be returned to the dentist upon whose order the work was constructed. Any licensed dentist who employs or engages the services of any person, firm, or corporation to construct, reproduce, make, alter or repair bridges, crowns, dentures, or other prosthetic appliances or surgical appliances or orthodontic appliances, shall furnish such person, firm or corporation with a written work

authorization on forms prescribed by the state board of dental examiners, which shall contain (a) the name and address of the person, firm or corporation to which the work authorization is directed, (b) the patient's name or identification number, but in case only a number is used the patient's name shall be written upon the duplicate copy of the work authorization retained by the dentist, (c) the date on which the work authorization was written, (d) a description of the work to be done, including diagrams, if necessary, (e) a specification of the type and quality of the materials to be used, (f) the signature of the dentist and the number of his license to practice dentistry. The person, firm or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization and the dentist shall retain the duplicate copy thereof for inspection at any reasonable time by the state board of dental examiners or its authorized agents for a period of two (2) years from date of issuance.

Nothing in this act contained applies to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau, or to a legal practitioner of another state making a clinical demonstration before a dental society, convention or association of dentists, or to a duly licensed dental hygienist performing any act defined and authorized under the provisions of section 66-921, R. C. M. 1947.

No person, firm or corporation engaged in the business of constructing, altering or repairing bridges, crowns, dentures or other prosthetic appliances or surgical appliances or orthodontic appliances shall advertise such services, technique or materials to the general public by means of advertisements in public newspapers, magazines or by radio or television display advertisements or by any other means excepting advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines and listings in business and telephone directories limited to name, address and telephone number, which shall not occupy more than the number of lines necessary to disclose such information, nor shall any person, firm or corporation so engaged in any way directly solicit the patronage of the general public.

History: En. Sec. 10, Ch. 48, L. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969.

Amendments

The 1969 amendment, at the end of the second paragraph, substituted "duly licensed * * * provisions of section 66-921, R. C. M. 1947" for "legally qualified dental hygienist in the performance of his or her duties as provided by law."

66-913. (3115.13) Revocation or suspension of license—grounds—conviction of crime—renting or loaning license—unprofessional conduct—proceedings for revocation or suspension. Any dentist may have his license revoked or suspended by the state board of dental examiners for any of the following reasons:

1. * * * [Same as parent volume.]
2. For renting or loaning or attempting to rent or loan to any person his license for the practice of dentistry or his diploma of gradua-

tion from a dental college, school or course to be used as a license or diploma of such person.

3. For permitting any dental hygienist, under his personal supervision to do any act or perform any operation other than those defined and authorized under section 66-921, R. C. M. 1947.

4. For permitting unlicensed auxiliary personnel to perform duties or tasks other than those which may be specifically authorized from time to time by the state board of dental examiners.

5. For unprofessional conduct as herein defined or for gross ignorance or inefficiency in his profession, or for habitual intemperance or gross immorality.

Unprofessional conduct shall consist of employing what are known as "cappers" or "steerers" to obtain business; the obtaining of any fee by fraud or misrepresentation; willfully betraying professional secrets; employing, directly or indirectly, any student or any suspended or unlicensed dentist to perform any operations in the practice of dentistry or to treat lesions of the human teeth or jaws or correct malimposed formations thereof; making use of any advertising statements of a character tending to deceive or mislead the public; advertising prices; advertising professional superiority, or performance of professional services in a superior manner; advertising by means of a large display, glaring light sign, or other sign or device containing as a part thereof the representation of a tooth, teeth, bridgework, or any portion of the human head; advertising over television or radio in any manner; employing or making use of advertising solicitors or publicity press agents; advertising any free dental work or free examination; advertising to guarantee any dental service or to perform any dental operation painlessly; advertising by sign or printed advertisements under the name of a corporation, company, association or trade name.

Proceedings under this section may be taken by the board upon its initial motion, for matters within its knowledge, or may be taken upon the information of another; provided, however, that if the informant is a member of the board, the other members of said board shall constitute the board for the purpose of determining the truth of the charge or accusation. All accusations must be in writing, verified by some party familiar with the facts therein charged, and three copies thereof must be filed with the secretary of the board. Upon receiving the accusation the board shall, if it deem the accusation sufficient, make an order setting the same for hearing, and requiring the accused to appear and answer such charge or accusation at said hearing, at a specified time and place, and the secretary shall cause a true copy of said order of the board and of the accusation or charge to be served upon the accused at least ten (10) days before the day appointed in the order for said hearing.

The process issued by the board, or any member thereof, shall extend to all parts of the state, and may be served by any persons authorized to serve process of courts of record, or by any person designated for that purpose by the board or any member thereof. Proof of service shall be made as provided in civil cases in courts of record and shall

be filed with the secretary of the board. The person executing any such process shall receive such compensation as may be allowed by the board, not to exceed the fees now prescribed by law for similar service, and such fees shall be paid in the same manner as provided herein for the fees of witnesses. The accused must appear at the time appointed in the order and answer the charges and make his defense to the same, unless for sufficient cause, upon the accused's application or the board's order, the board assign another day for that purpose.

If the accused does not appear the board may proceed and determine the accusation in his absence. If the accused confess the accusation or refuse to answer the charge, or upon the hearing thereof, the board shall find the charge or accusation (whether one or more) true, it may proceed to an order either revoking the license of the accused or suspending it for a fixed period. The board and the accused may have the benefit of counsel, and the board shall have the power to administer oaths, take depositions of witnesses in the manner provided by law in civil cases, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state. Such subpoena shall be issued over the signature of the secretary of the board and the seal thereof, and in the name of the state of Montana.

Upon revocation or suspension of any license the fact shall be noted upon the records of the state board of dental examiners of the state of Montana and the license shall be marked as canceled upon the date of its revocation, or suspended, as the case may be. The secretary of the board shall, upon order of suspension or revocation being entered, transmit to the county recorder wherein the license of the licensee affected by such judgment is registered and recorded, a copy of such order, certified to as such by said secretary of the board, for record, and the same shall be registered in the same manner and in the same book wherein is kept the registration of the certificate to practice dentistry.

History: En. Sec. 13, Ch. 48, L. 1935; amd. Sec. 6, Ch. 352, L. 1969.

Amendments

The 1969 amendment deleted "or her" after "his" where the references appear; inserted subdivisions (3) and (4), renumbered former subdivision (3) as subdivision (5) and in the second paragraph thereof, substituted prohibition against "advertising over television or radio in

any manner" for "advertising over the radio in any manner not expressly permitted by this chapter" and deleted "except that corporations, companies or associations existing and actually engaged in the practice of dentistry prior to the enactment of this chapter may continue operating under such name while conforming to the provisions of this act." at the end of said second paragraph.

66-917. (3115.17) Publishing professional cards not unprofessional conduct, when. It shall not be considered unprofessional for a dentist to place in any newspaper or publication, subject to the limitations stated hereafter, a card bearing his name only, together with his degree, or the word "dentist," and giving office location, hours and telephone numbers and if he limits his practice to a specialty he may so announce it, or he may announce his absence from, or his return to, practice in the

same manner. Such professional card or announcement shall not be run in any newspaper or publication in excess of five (5) issues following the opening of his office by a newly licensed dentist, or following the change of location of a dentist's office, or after limiting his practice to a specialty, or after the absenting of a dentist from his practice, or following his return to the practice of dentistry. The publishing of professional cards or announcements in violation of these limitations shall be considered unprofessional. Such card or announcement shall not be more than two columns in width, or more than three inches in depth.

History: En. Sec. 17, Ch. 48, L. 1935; amd. Sec. 5, Ch. 34, L. 1961; amd. Sec. 7, Ch. 352, L. 1969.

Amendments

The 1969 amendment deleted "or her" after "his" in the first sentence and substituted "two columns" for "one column" in the last sentence.

66-919. (3115.19) Practicing dentistry without certificate, penalty for—disposition of fines. Any person who, as principal, agent, employer, employee or assistant, shall practice dentistry in any manner whatever, or who shall do any act of dentistry, without having first secured his or her certificate to practice dentistry from the state board of dental examiners of the state of Montana entitling him or her to so practice in this state, shall be guilty of a misdemeanor, and upon conviction in a district court shall be fined in any sum not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) or be confined for any period not exceeding six (6) months in the county jail, for each and every offense. All fines imposed and collected under this act shall be paid into the treasury of the county in which such suits, actions or proceedings shall have been commenced. All moneys thus paid into the treasury over and above the amount necessary to reimburse the county for any expense incurred by said county, in any suit, action or proceeding brought under the provisions of this act, shall be paid, before the first day of January of each year, to the treasurer of the state of Montana, for deposit in the earmarked revenue fund for the use of the state board of dental examiners.

History: En. Sec. 19, Ch. 48, L. 1935; amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the words "treasurer of the state of Montana, for deposit in the earmarked revenue fund for the use of the state board of dental

examiners" at the end of the section for "secretary-treasurer of the state board of dental examiners of the state of Montana, and become and be a part of the fund to be used by the said state board of dental examiners in the enforcement of the provisions of this act, and shall be used for no other purpose."

66-920. (3115.20) Affiliation with national association authorized—delegate—expenses allowed. The said board of dental examiners may affiliate with the national association of dental examiners as an active member, and may pay regular annual dues to said association, and may send a delegate to the meetings of such association, which delegate shall be reimbursed as follows:

(1) Fifteen dollars (\$15) per day for each day traveling to and from any meeting and while in actual attendance at any meeting.

(2) For such expenses and travel as are authorized under the provisions of section 59-538 and 59-801, R. C. M. 1947.

(3) For first class railroad and Pullman fares actually incurred to and from his place of residence to the place of any meeting.

History: En. Sec. 20, Ch. 48, L. 1935; amd. Sec. 8, Ch. 352, L. 1969.

Amendments

The 1969 amendment rewrote this section, added the subdivision numbering and form, increased the daily allowance

from \$10 to \$15, inserted the content of subdivision (2), deleted provision for allowance of an amount equal to railroad and Pullman fare, and inserted authorization for reimbursement for "first class" fare.

66-921. Dental hygiene defined—~~dental hygienists—~~qualifications—examination — fee — registration — certificate form — re-examination —powers and limitations—revocation of license. (1) Said board may also issue to qualified applicants licenses for the practice of dental hygiene to be known as dental hygienists. The practice of dental hygiene is the doing by one person, for a direct or indirect consideration, with respect to the teeth of another person, or any act or service, educational, therapeutic, prophylactic or preventive in nature, as the state board of dental examiners may from time to time, in writing, define and authorize; provided, however, that nothing in this section shall be construed to allow the board or any licensed dentist to delegate any of the following duties: (a) Diagnosis, treatment planning and prescription; (b) Surgical procedures, on hard and soft tissues; (c) All restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of the dentist; (d) Prescription for drugs, medications and/or work authorizations.

Every candidate for examination as a dental hygienist shall file in his full name an application for examination with the secretary-treasurer of the board at least twenty (20) days before the date set by the board for the commencement of such examination and at the time of making such application shall pay the secretary-treasurer of the board a fee of twenty dollars (\$20). Such applicant shall likewise furnish satisfactory proof that he is of good moral character and has earned a diploma or certificate from a school of dental hygiene offering a course of study recognized and approved by the board of dental examiners.

The board shall adopt a uniform code of rules and regulations within the limitations of this act, governing the matter of examinations for license to practice dental hygiene in the state of Montana, which examinations shall be open to any applicant meeting the requirements of this act, and shall also provide in such code for giving reasonable notice of the time and place where examinations shall be held.

The state board of dental examiners may recognize a certificate granted by the national board of dental hygiene examiners in lieu of such examination as the board may, from time to time, require.

Any dental hygienist who can produce satisfactory evidence that he has been employed as a dental hygienist in the office of a regularly licensed dentist in the state of Montana for one (1) or more years prior to the passage of this act, may, upon payment of a fee of twenty dollars

(\$20), be granted a certificate to practice by the state dental board. Such certificate must be secured before such person may continue practice as a hygienist.

(2) Every applicant who shall successfully pass such examination as may be prescribed by the board shall, upon the payment of a fee of fifteen dollars (\$15), be granted a license as a dental hygienist, and shall be registered as such in a record kept by the secretary of the state dental board, and shall receive a certificate, signed by the president and secretary-treasurer and other members of the board, in substantially the following form, to wit:

"This is to certify that _____ is hereby licensed as a dental hygienist in the state of Montana. This certificate must be filed for registration in the office of the county clerk of any county in which the holder of this certificate desires to practice, and it shall be unlawful for him to practice in any county in which said certificate is not filed for registration.

Dated at _____, this _____ day of _____, 19____."

(3) Such licensed dental hygienist may practice in the office of a legally licensed and actively practicing dentist or in any public or private institution or under a board of health or in any public clinic authorized by the board but shall not practice except under the direct personal supervision of a licensed dentist except the dental hygienist may give instruction in dental hygiene without the supervision of a licensed dentist in any public or private institution or under a board of health or in any public clinic authorized by the board.

(4) Any applicant failing to pass his first examination before such board may, at any subsequent meeting of the board held for the purpose of examining candidates, if otherwise qualified, take subsequent examinations upon payment of the fee of twenty dollars (\$20) for each such examination.

History: En. Sec. 21, Ch. 48, L. 1935; amd. Sec. 9, Ch. 352, L. 1969.

Amendments

The 1969 amendment rewrote subsection (1), inserted the definition of dental hygiene, increased the examination fee from \$10 to \$20, and added the last four paragraphs; in subsection (2), inserted "upon the payment of a fee of fifteen dollars (\$15)" after "by the board," and "and other members" after "secretary-treasurer," deleted "or her" after "unlawful for him," and deleted a paragraph permitting taking subsequent examination

without cost if first examination was failed; rewrote subsection (3), deleted enumeration of specific work that hygienist could perform, deleted provision authorizing revocation or suspension of licenses of hygienist and supervising dentist for violation of act and substituted provision permitting hygienist to give instruction in dental hygiene without a dentist's supervision for former provision that "he shall not operate in any case except under the direct supervision of a licensed dentist," and added subsection (4).

66-922. (3115.22) **Annual license fee for dental hygienists—revocation of license.** Before the first day of March in each year every licensed dental hygienist shall pay to the board of dental examiners a license fee of three dollars (\$3), and in default of such payment, the board may after hearing and upon thirty (30) days' notice revoke the license of the hygien-

ist in default; but the payment of such fee on or before the time of hearing, with such additional sum as shall be fixed by the board, not exceeding three dollars (\$3), shall excuse the default. The board may collect such fee by suit.

The board may likewise revoke or suspend the license of any dental hygienist for violating any of the provisions of this act.

History: En. Sec. 22, Ch. 48, L. 1935; **Amendments**
amd. Sec. 10, Ch. 352, L. 1969.

The 1969 amendment substituted "March" for "May" and "three dollars (\$3)" for "\$1.00" and "one dollar" and added the second paragraph.

66-923. (3115.23) Admission of dental hygienists from other states—unlawful to practice without license—licenses for practicing hygienists—reciprocity. (1) Any dental hygienist:

(a) who has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state,

(b) who has been lawfully and continuously engaged in the practice of dental hygiene for a period of one (1) year or more immediately before filing his application to practice in this state, and

(c) who shall deposit in person with the secretary-treasurer of the board a duly attested certificate from the examining board of the state or territory in which he is registered and/or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments; may upon the payment of a fee of twenty dollars (\$20) and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dental hygiene in this state without being required to take an examination in theory; except as provided in subparagraph [subsection] (2) below, no license shall be issued without an examination in theory to any such applicant, unless the state or territory from which such certificate has been granted shall have extended a like privilege to engage in the practice of dental hygiene within its own borders to dental hygienists heretofore and hereafter licensed by this state, and removed to such other state.

(2) Any dental hygienist who has been lawfully licensed to practice in another state or territory not having reciprocity with the state of Montana but which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board is equal to that at the time maintained in this state, and who shall deposit in person with the secretary-treasurer of the board, a duly attested certificate from the examining board of the state or territory in which he is registered and/or licensed, certifying to the fact of his registration and license and his being a person of good moral character and of professional attainment may, upon the payment of a fee of twenty dollars (\$20), be granted a temporary license authorizing such person to practice dental hygiene from the time of the granting of such license until the time of the next

regular examination for dental hygiene set by the board. No additional fee for such examination shall be charged.

(3) Except as provided in subsections (1) and (2) of this section no person shall engage in the practice of dental hygiene or practice as a dental hygienist in this state until such person has passed an examination given or approved by the board under such rules and regulations as it may deem fit and proper to formulate and has been issued a license therefore by the board.

(4) The board shall have and is hereby granted the power and authority to enter into reciprocity agreements with other states or territories, the standards of which as to the practice of dental hygiene, are, in the opinion of the board, equal to those of this state.

(5) Nothing contained in this act relating to the practice of dental hygiene shall apply to the practice thereof by a duly licensed dentist or a duly licensed physician and surgeon in Montana.

History: En. Sec. 23, Ch. 48, L. 1935; amd. Sec. 11, Ch. 352, L. 1969.

Amendments

The 1969 amendment rewrote this sec-

tion, adding the subsection and subdivision numbering, increasing the license fee from \$10 to \$20, and inserting the reciprocity provisions.

66-923.1. Auxiliary personnel—employment, duties and limitations.

The board shall, within the limitations of this act, adopt rules and regulations, which define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by any licensed dentist in his office except that nothing herein shall be construed to allow the board by rule or regulation to provide for delegation by a licensed dentist to any such auxiliary personnel, any of the duties prohibited to dental hygienists under section 66-921 (1), R. C. M. 1947, or a prophylaxis. The performance of intraoral tasks by dental auxiliaries, as permitted by board rules and regulations, shall be under the direct supervision of the licensed dentist employing such personnel.

History: En. Sec. 66-923.1 by Sec. 12, Ch. 352, L. 1969.

Title of Act

An act amending sections 66-904, 66-905, 66-906, 66-909, 66-910, 66-913, 66-917, 66-920 through 66-924, R. C. M. 1947, being sections of the Montana Dentistry Regulation Act, to provide fiscal year accounting for the state board of dental examiners, deleting the regular annual meeting date, raising the dental examination fee to

fifty dollars, providing for payment of fees for each subsequent examination for dentists and dental hygienists; providing for an emergency fund from annual license fees; providing per diem and travel allowance for board members; increasing grounds for revocation or suspension of dental license; raising license fees of dental hygienists; amending reciprocity requirements for admission of dental hygienists; authorizing the board to adopt rules governing auxiliary personnel.

66-924. (3115.24) Recognition of dental schools. In determining what shall constitute a recognized dental college or school and/or a recognized school of dental hygiene, the board shall be guided by the standards, canons and practices required for such recognition by the council on dental education of the American Dental Association.

History: En. Sec. 24, Ch. 48, L. 1935; amd. Sec. 13, Ch. 352, L. 1969.

Amendments

The 1969 amendment substituted "council * * * Association" for "national association of dental faculties."

66-925. (3115.25) Citation of act—regulatory board. This act may be known and cited as the “Montana Dentistry Regulation Act.”

History: En. Sec. 27, Ch. 48, L. 1935; “and said state board of dental examiners of the state of Montana is hereby declared to be a regulatory board within the meaning of the proviso of section 79-306” amd. Sec. 151, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words at the end of the section.

CHAPTER 10—MEDICINE—REGULATION OF PRACTICE

- Section 66-1010. Short title.
 66-1011. Purpose of Medical Practice Act.
 66-1012. Practice of medicine defined—exemptions from licensing requirements.
 66-1013. State board of medical examiners—qualifications and appointment.
 66-1014. State board of medical examiners—term of medical examiners.
 66-1015. Organization.
 66-1016. Policy.
 66-1017. Powers and duties of board.
 66-1018. Meetings.
 66-1019. Records.
 66-1020. Compensation of members.
 66-1021. Kinds of certificates—issuance—reciprocity certificates and certificates by endorsement—renewal.
 66-1022. Statement as to practice permitted.
 66-1023. Practice authorized by certificate—physician's certificate.
 66-1024. Practice authorized by temporary certificate.
 66-1025. Qualifications for licensure—physician's certificates, reciprocity and endorsement.
 66-1026. Qualifications for licensure—temporary certificate.
 66-1027. Qualifications for licensure—limitations.
 66-1028. Approved medical school.
 66-1029. Approved internship.
 66-1030. Approved residency.
 66-1031. License fee.
 66-1032. Application for license.
 66-1033. Examination.
 66-1034. Issuance of license—prior practice prohibited.
 66-1035. Validation of licenses to practice medicine and surgery heretofore issued.
 66-1036. Refusal of license.
 66-1037. Unprofessional conduct.
 66-1038. Revocation or suspension of license—probation.
 66-1039. Reconsideration and review of actions of board.
 66-1040. Appeals from decision of board.
 66-1041. Violations—penalties.
 66-1042. Annual registration fees—limiting authority to impose registration fees.
 66-1043. Board of medical examiners fund—deposits therein—withdrawals therefrom—reports required.
 66-1044. Transfer of records—supplies and moneys.
 66-1045. Injunctive relief—manner of charging violation of act.
 66-1046. Subpoena—how to issue—fees—service.
 66-1047. Failure to appear or testify—penalty.
 66-1048. Notice of change of address or name.
 66-1049. Service of notice or other process.

66-1001 to 66-1009. (3116 to 3124) Repealed.

Repeal

Sections 66-1001 to 66-1009 (Secs. 600 to 608, Pol. C. 1895; Sec. 1, Ch. 95, L. 1903; Sec. 1, Ch. 100, L. 1907; Sec. 1, Ch. 101, L. 1907; Sec. 1, Ch. 114, L. 1907; Sec. 1, Ch. 68, L. 1927; Secs. 1 to 5, Ch.

132, L. 1943; Sec. 1, Ch. 119, L. 1957; Secs. 1 to 5, Ch. 29, L. 1961; Secs. 128, 129, Ch. 147, L. 1963; Sec. 22, Ch. 93, L. 1969), regulating the practice of medicine, were repealed by Sec. 43, Ch. 338, Laws 1969.

Compiler's Notes

The amendment of section 66-1009 by Sec. 22, Ch. 93, Laws 1969 is void under the rule of section 43-515. Chapter 93

was approved February 24, 1969, effective July 1, 1969 and Chapter 338 was approved March 13, 1969, effective upon passage and approval.

66-1010. Short title. This act shall be known as the "Medical Practice Act."

History: En. Sec. 1, Ch. 338, L. 1969.
Title of Act

An act to provide a comprehensive revision of the act regulating the practice of medicine within the state of Montana and by stating the purposes of said act; by defining the practice of medicine and by providing exemptions from licensing requirements; by creating the state board of medical examiners and defining the qualifications of, and appointment of members to, said board and by setting the term of office of the members of said board; by providing for the organization, the policy, the powers and duties, the meetings and the records of the board and for the compensation of the members of said board; by defining the kinds of certificates for licensure and for the issuance and renewal thereof; by defining the practice authorized by the certificates for licensure; by providing for licensure by reciprocity or endorsement; by defining the qualifications for licensure to practice medicine and providing limitations; by defining approved medical school, approved internship and approved residency; by establishing license fees and limiting authority to impose same; by providing for licensure to practice medicine and for applications for license by examination, and otherwise, and for the issuance or refusal of license; by prohibiting practice prior to licensure; by providing for the validation of licenses to practice medicine and surgery heretofore issued; by defining

unprofessional conduct and by providing for the revocation or suspension of licenses and for the disciplining of, and the procedure for disciplining license holders; by prohibiting the practice of medicine without a license and providing penalties therefor; by providing for annual registration, and fees therefor, and limiting authority to impose such fees; by establishing the board of medical examiners' fund and providing for deposits therein and withdrawals therefrom and for reports in connection therewith; by providing for the transfer of records, supplies and moneys from the state board of medical examiners hereby abolished to the new board hereby created; by providing for injunctive relief in enforcing said act and the manner of charging violations thereunder; by providing for the issuance of subpoenas including the manner of issuance, fees and service thereof, and penalties for failure to obey same; by providing for notice of change of address or name of licensee; by providing for service of notice or other process on licensees; by providing a saving clause; and by repealing sections 66-1001 through 66-1009, both inclusive, of the R. C. M. 1947, relating to practitioners of medicine and surgery and repealing all acts and parts of acts in conflict herewith and providing that said act shall be and become effective on passage and approval.

66-1011. Purpose of Medical Practice Act. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of medicine within the state of Montana is a privilege granted by the legislative authority and is not a natural right of individuals and that it is deemed necessary, as a matter of such policy and in the interests of the health, happiness, safety and welfare of the people of Montana, to provide laws and provisions covering the granting of that privilege and its subsequent use, control and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized and unqualified practice of medicine and to license competent physicians to practice medicine and thereby provide for the health needs of the people of Montana.

History: En. Sec. 2, Ch. 338, L. 1969.

66-1012. Practice of medicine defined—exemptions from licensing requirements. (1) For the purpose of this act the term "practice of medicine" shall mean:

(a) the practice of medicine by any person shall mean the diagnosis, treatment or correction of, or the attempt to, or the holding of oneself out as being able to diagnose, treat or correct any and all human conditions, ailments, diseases, injuries or infirmities, whether physical or mental, by any means, method, devices or instrumentalities.

If any person who does not possess a license to practice medicine within this state, as in this act provided, and who shall not be exempted from the licensing requirements hereunder, shall do any of the acts hereinabove mentioned as constituting the practice of medicine, he shall be deemed to be practicing medicine without complying with the provisions of this act and in violation thereof.

(2) Nothing herein shall be construed to prohibit, or to require a license hereunder with respect to, any of the following acts:

(a) the gratuitous rendering of services in cases of emergency and catastrophe or either of them;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory, provided, that if any such physician does not limit such services to an occasional case or if he has any established or regularly used hospital connections in this state or if he maintains or is provided with, for his regular use, any office or other place for the rendering of such services, he must possess a license to practice medicine in this state;

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state as now or hereafter enacted;

(d) the practice of chiropody (podiatry) under the conditions and limitations defined by the laws of this state as now or hereafter enacted;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state as now or hereafter enacted;

(f) the practice of osteopathy under the conditions and limitations defined by the laws of this state as now or hereafter enacted;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state as now or hereafter enacted;

(h) the practice of Christian Science, with or without compensation; and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States of America or of the United States public health service or of the United States veterans administration of their lawful duties in this state as such officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as such;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, except as otherwise provided herein, subject to the conditions and limitations provided by this act;

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist, under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine, but nothing in this exemption shall be deemed to extend the scope of any such paramedical specialist; and

(m) the practice by persons licensed under any law of this state as now or hereafter enacted to practice a limited field of the healing arts and not hereinbefore specifically designated, under the conditions and limitations defined by such law;

Provided, however, that all licensees in this subsection (2) designated or referred to, who are licensed to practice a limited field of healing arts, shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses, and shall not use the title M.D., or any word or abbreviation to indicate, or to induce others to believe that he or she is engaged in the diagnosis or treatment of persons afflicted with disease, injury or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed.

History: En. Sec. 3, Ch. 338, L. 1969.

66-1013. State board of medical examiners—qualifications and appointment. There is hereby created the Montana state board of medical examiners, herein referred to as the board, which shall consist of seven (7) members, to be appointed by the governor, with the advice and consent of the senate, as herein provided, and to have the qualifications herein prescribed. Upon the taking effect of this act, the state board of medical examiners, as constituted under the laws of this state immediately prior thereto, is hereby abolished but the members thereof shall constitute the initial board under this act and the respective terms of such members shall extend through and expire on September 1 of the year during which their respective terms, as determined by their appointment under such prior law, would have expired. The terms of their successors shall be so arranged as to succeed the present incumbents as their terms expire. The board shall be comprised at all times of seven (7) members having the degree of doctor of medicine, all of whom shall be citizens of the United States and shall have been licensed and shall have practiced medicine in this state for at least five (5) years, not more than one (1) of whom shall be from the same county to ensure reasonable representation on said board from the several parts of the state, and, all of whom shall have been residents of this state for at least five (5) years. All vacancies occurring shall be filled by appointment or reappointment by the governor with the advice and consent of the senate. Appointments made when the senate is not in session shall take effect immediately, and may be confirmed at the next ensuing session of the senate. Each member of the board shall, before he enters upon the duties of his office, take an oath or affirmation to support the constitution of the United States and of the state of Montana and faithfully to perform the duties of the office upon which he is about to enter.

Members of the board shall remain in office until their successors have been appointed. A member of the board may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence or unprofessional or dishonorable conduct.

History: En. Sec. 4, Ch. 338, L. 1969.

66-1014. State board of medical examiners—term of medical examiners. The members appointed to the board of medical examiners as in this act provided shall hold their respective offices for seven (7) years, or until their successors have been appointed, each said term to commence on September 1 of each year of appointment, provided, however, that the terms in office of those constituting the present board shall not be affected by the provisions of this act, except as to the date of expiration.

History: En. Sec. 5, Ch. 338, L. 1969.

66-1015. Organization. The board of medical examiners shall, at the first meeting each year, elect from among their members a president and vice-president; and appoint an executive secretary, who may be a board member or another person. The board shall adopt a seal, upon which shall appear the words "The Board of Medical Examiners of Montana" and the further words "Official Seal" and all acts, rules, orders, regulations, certificates and licenses shall be authenticated by said seal.

History: En. Sec. 6, Ch. 338, L. 1969.

66-1016. Policy. The board shall maintain reasonable and continuing supervision and surveillance over all licensees under this act to ensure that such licensees maintain standards of conduct and exercise the privileges granted hereunder in the greatest public interest and to carry out the purposes and provisions of this act.

History: En. Sec. 7, Ch. 338, L. 1969.

66-1017. Powers and duties of board. In addition to all of the powers and duties conferred and imposed upon the board by this act, the board shall have and exercise the following powers and duties:

(1) To adopt and promulgate such rules and regulations as the board may deem necessary or proper to carry out the provisions and purposes of this act which shall be fair, impartial and nondiscriminatory; for the purpose of this act all rules and regulations adopted by the state board of medical examiners as constituted under the prior laws of this state and in force and effect immediately prior to the effective date of this act shall remain in full force and effect until superseded by the rules and regulations adopted hereunder by the board;

(2) To hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board; and, through any member thereof, or the executive secretary, to subpoena witnesses, administer oaths, compel the testimony of witnesses and the production of books, papers and records relevant to any inquiries and to take and receive evidence by deposition, the commis-

sion being issued by the president of the board and the law and practice as to depositions in state district courts being applicable in all reasonable respects, and no such deposition shall be suppressed if fairly taken and if no injustice will result from its admission ;

(3) To appoint, employ, and prescribe the duties and compensation of an executive secretary who shall be the executive officer of the board, legal counsel and such other personnel as the board shall deem necessary, subject to the constitution and the laws of this state ;

(4) To aid the several county attorneys of this state in the enforcement of this act and in the prosecution of all persons, firms, associations or corporations charged with the violations of any of its provisions.

History: En. Sec. 8, Ch. 338, L. 1969.

Compiler's Notes

This act became effective March 13, 1969.

66-1018. Meetings. The board of medical examiners shall hold meetings for examinations, and for the transaction of such other business as may properly come before the board at least twice annually at times and places to be set by the board.

The president of the board may call such special meetings of the board as may be deemed advisable or necessary.

Four (4) members of said board shall constitute a quorum.

History: En. Sec. 9, Ch. 338, L. 1969.

66-1019. Records. The board shall keep a record of the proceedings thereof, and also records of all applicants for a certificate and a register of all licenses. The register is prima facie evidence of all the matters therein kept.

History: En. Sec. 10, Ch. 338, L. 1969.

66-1020. Compensation of members. Each member of the state board of medical examiners shall receive twenty-five dollars (\$25) per diem, and mileage equal to that allowed by law to the members and employees of any other state agency, board or commission, while in the active and necessary discharge of his duties.

History: En. Sec. 11, Ch. 338, L. 1969.

66-1021. Kinds of certificates—issuance—reciprocity certificates and certificates by endorsement—renewal. The board may issue two (2) forms of certificates under its seal, the physician's certificate and the temporary certificate. The physician's certificate shall be signed by the executive secretary and the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates shall be designated as :

(a) physician's certificate, which is subject to annual registration ;

(b) temporary certificate, which is subject to specifications and limitations imposed by the board.

History: En. Sec. 12, Ch. 338, L. 1969.

66-1022. Statement as to practice permitted. The certificates issued shall state the extent and character of the practice that is permitted, and shall be in the form prescribed by the board. Neither the privileges nor the obligations granted to or imposed upon licensees may be altered except by legislative enactment or by action of the board duly authorized hereunder.

History: En. Sec. 13, Ch. 338, L. 1969.

66-1023. Practice authorized by certificate—physician's certificate. The physician's certificate, which may be issued only to citizens of the United States, authorizes the holder to perform one or more of the acts embraced in section three (3) [66-1012] of this act in a manner reasonably consistent with his training, skill and experience.

History: En. Sec. 14, Ch. 338, L. 1969.

66-1024. Practice authorized by temporary certificate. The temporary certificate, which may be issued to any citizen or to an alien otherwise qualified for a physician's certificate, and which may be issued for a period not to exceed one (1) year subject to renewal for additional periods of one (1) year, but not to exceed five (5) such renewals, at the discretion of the board, authorizes the holder to perform one (1) or more of the acts embraced in section three (3) [66-1012] of this act in a manner reasonably consistent with his training, skill and experience, subject, nevertheless, to all specifications, conditions and limitations imposed by the board.

History: En. Sec. 15, Ch. 338, L. 1969.

66-1025. Qualifications for licensure—physician's certificates, reciprocity and endorsement. (1) Subject to the other provisions and conditions of this act, a physician's certificate, or a certificate by reciprocity or a certificate by endorsement shall be granted by the board to an applicant therefor only upon the basis of;

(a) the passing by the applicant of an examination given and graded by the board; or

(b) a certification of record or other certificate of examination issued to or for the applicant by the National Board of Medical Examiners, or successors, or by the Federation Licensing Examination Committee, or successors, certifying that the applicant has passed an examination given by such board; or

(c) a valid, unsuspended and unrevoked license or certificate issued to the applicant on the basis of an examination, by a duly constituted examining board under the laws of any other state or any territory of the United States or of the District of Columbia or of any foreign country whose licensing standards at the time such license or certificate was issued were, in the considered judgment of the board, essentially equivalent to those of the state of Montana for the granting of a license to practice medicine, provided:

(i) that under the scope of such license or certificate the applicant was authorized to practice medicine in such state, territory or country;

(ii) that no applicant who applies for a license on the basis of an examination and fails the examination shall thereafter be granted a license based on credentials from another state, territory or foreign country or on a certificate issued by the National Board of Medical Examiners, or successors, or by the Federal Licensing Examination Committee or successors;

(iii) that the board may, by specific regulation, prescribe and enforce reciprocity or endorsement requirements current with changes in standards in the practice of medicine; and

(iv) that the board may, in the case of an applicant for admission by reciprocity, or endorsement, require a written or oral examination of said applicant; and

(v) the board may require that graduates of foreign medical schools shall have passed the examination given by the Education Council for Foreign Medical Graduates, or successors.

History: En. Sec. 16, Ch. 338, L. 1969.

Compiler's Notes

As enacted, this section contained no subsection (2).

66-1026. Qualifications for licensure — temporary certificate. (1) Subject to the other provisions and conditions of this act, a temporary certificate to practice medicine may be granted by the board to an applicant therefor, who may be either a citizen of the United States or an alien, upon the basis of;

(a) the passing by the applicant of an examination given and graded by the board; or

(b) a certification of record or other certificate of examination issued to or for the applicant by the National Board of Medical Examiners or successors, or by the Federation Licensing Examination Committee, or successors, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended and unrevoked license of any certificate issued to the applicant, on the basis of an examination, by a duly constituted examining board under the laws of any other state or of any territory of the United States or of the District of Columbia or of any foreign country whose licensing standards at the time such license or certificate was issued were essentially equivalent, in the judgment of the board, to those of the state of Montana at the time for the granting of a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed one (1) year of internship, or its equivalent, and is of good moral character and good conduct; and

(e) the board may require that graduates of foreign medical schools shall have passed the examination given by the Education Council for Foreign Medical Graduates, or successors.

History: En. Sec. 17, Ch. 338, L. 1969.

66-1027. Qualifications for licensure—limitations. (1) No person shall be granted a physician's certificate to practice medicine in the state of Montana unless he:

- (a) is at least twenty-one (21) years of age;
- (b) is a citizen of the United States;
- (c) is of good moral character, as determined by the board;
- (d) is a graduate of an approved medical school as defined in section 19 [66-1028] of this act;
- (e) has completed an approved internship of at least one (1) year or, in the opinion of the board, has had experience or training which is at least the equivalent of one (1) year internship as herein defined;
- (f) has made a personal appearance before the board.

The board may grant such license subject to terms of probation or other conditions or limitations set by the board or may refuse to grant a license to any such person if he has committed any of the acts or offenses herein defined as unprofessional conduct, or is otherwise unqualified.

(2) No person shall be granted a temporary license to practice medicine in the state of Montana unless he:

- (a) is at least twenty-one (21) years of age;
- (b) is a citizen of the United States, or has filed a properly executed declaration of intention to become a citizen of the United States;
- (c) is of good moral character, as determined by the board;
- (d) is a graduate of an approved medical school as defined in section 19 [66-1028] of this act;
- (e) has completed an approved internship of at least one (1) year or, in the opinion of the board, has had experience or training which is, at least, the equivalent of one (1) year internship as herein defined;
- (f) has made a personal appearance before at least one (1) member of the board; and

(g) has been approved for temporary licensure by the executive secretary of the board; and

(h) a temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may grant such temporary license subject to terms of probation or other conditions or limitations set by the board or may refuse to grant a license to any such person if he has committed any of the acts or offenses herein defined as unprofessional conduct. The issuance of a temporary certificate imposes no future obligation or duty on the part of the board to grant full licensure or to renew or extend such temporary license.

The board may, in any case of an applicant for a temporary certificate, require a written, oral or practical examination of said applicant.

History: En. Sec. 18, Ch. 338, L. 1969.

66-1028. Approved medical school. An approved medical school is a school which conforms to the minimum education standards as established by the Council on Medical Education of the American Medical As-

sociation or successors for medical schools or is equivalent in the sound discretion of the board of medical examiners of the state of Montana, it being provided that the board shall have the authority upon investigation of the educational standards and facilities thereof to approve any other medical school, including foreign medical schools.

History: En. Sec. 19, Ch. 338, L. 1969.

66-1029. Approved internship. An approved internship is an internship training program of at least one (1) year in a hospital conforming to the minimum standards for intern training established by the Council on Medical Education of the American Medical Association or successors; provided, however, that the board shall have the authority, upon investigation, to approve any other internship.

History: En. Sec. 20, Ch. 338, L. 1969.

66-1030. Approved residency. An approved residency is a residency training program in a hospital conforming to the minimum standards for residency training established by the Council on Medical Education of the American Medical Association or successors; provided, however, that the board shall have the authority upon investigation to approve any other residency. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

History: En. Sec. 21, Ch. 338, L. 1969.

66-1031. License fee. (1) An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay a fee of one hundred dollars (\$100), and an applicant for such license to be issued on the basis of a certificate from the National Board of Medical Examiners or successors, or the Federation Licensing Examination Committee or successors, shall pay a fee of one hundred dollars (\$100). An applicant for a license to practice medicine to be issued on the basis of a license or certificate from another duly constituted examining board, shall pay a fee of one hundred dollars (\$100).

(2) An applicant for a temporary license shall pay an initial fee of twenty-five dollars (\$25) and twenty-five dollars (\$25) for each renewal thereof;

(3) No license tax shall be imposed upon physicians by a municipality or any other subdivision of the state.

History: En. Sec. 22, Ch. 338, L. 1969.

66-1032. Application for license. (1) Every person desiring a license to practice medicine shall make application to the board, such application to be verified by oath and to be in such form and extent as shall be prescribed by the board. Such application shall be accompanied by the license fee and such documents, affidavits and certificates as are necessary to establish that the applicant possesses the qualifications prescribed by this act, apart from any required examination by the board. The burden of proof shall be upon the applicant, but the board may make such independent investigation as it may deem advisable to de-

termine whether the applicant possesses such qualifications and whether the applicant has at any time committed any of the acts or offenses herein defined as unprofessional conduct, and at the board's request, the applicant shall provide necessary authorizations for the release of any and all records and information pertinent to the board's information.

(2) An applicant for a license on the basis of an examination by the board shall file his application at least thirty (30) days prior to the announced date of the examination. If such applicant is not at the time of filing his application a graduate of, but is then in attendance at, an approved medical school, as that term is defined in this act, he shall submit to the board, in lieu of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of such approved medical school that the applicant will receive his diploma at the end of the then current school term; but in any such case the applicant shall not be granted a certificate until he has filed with the board his diploma or other acceptable evidence of graduation from such approved medical school, and has complied with the requirements of subsection (1) of this section, and no license shall be issued to him until he has satisfied the board that he has completed at least one (1) year of an approved internship, or its equivalent, and has otherwise met the requirements for the issuance of a license under this act.

History: En. Sec. 23, Ch. 338, L. 1969.

66-1033. Examination. Examinations for a license to practice medicine shall be held not less than twice each year, at such time and place as shall be specified by the board. The examination shall be conducted in the English language, and shall be sufficiently comprehensive in medicine to adequately test the applicant's professional competence and ability. The examination shall be fair and impartial. Examination papers shall not disclose the name of any applicant but shall be identified by a number to be assigned by the executive secretary of the board. The board may use the examination or portion thereof prepared by the National Board of Medical Examiners, or the examination prepared by the Federation Licensing Examination Committee, or successors.

The board may, in its discretion, give an oral or a practical examination to test the applicant's qualifications for licensure, and grant appropriate credit therefor.

The board may use other Montana physicians to assist in preparing and conducting such examination.

No person shall be granted a license to practice medicine if he fails to attain an average grade of at least seventy-five per cent (75%). If an applicant fails to meet such minimum grade requirements in his first examination, he may, after not less than six (6) months nor more than twelve (12) months, be re-examined without an additional fee. He may take one (1) additional examination, but not less than one (1) year after the date of the last preceding examination and he shall be required to pay a fee of fifty dollars (\$50) for such additional examination. In case an applicant is prevented through no fault of his own from taking

a scheduled examination he may, within two (2) years, be examined without payment of another fee or submission of a new application.

History: En. Sec. 24, Ch. 338, L. 1969.

66-1034. Issuance of license—prior practice prohibited. If the board determines that an applicant possesses the qualifications required by this act and is entitled thereto, the board shall issue a license to practice medicine which shall be signed by the president or vice-president and attested by the executive secretary and sealed with the seal of the board.

Prior to the issuance to him of such license, the applicant shall not engage in the practice of medicine in this state, and any person who shall practice medicine in this state without first having obtained such license shall be deemed to have violated the provisions of this act.

History: En. Sec. 25, Ch. 338, L. 1969.

66-1035. Validation of licenses to practice medicine and surgery heretofore issued. All licenses to practice medicine and surgery in this state heretofore issued by any prior board of medical examiners are hereby declared to be valid and sufficient in law and in full force and effect and shall be and are sufficient to qualify the holder thereof to practice medicine, as defined in this act, in the state of Montana.

History: En. Sec. 26, Ch. 338, L. 1969.

66-1036. Refusal of license. If the board shall determine that an applicant for license to practice medicine does not possess the qualifications or character required by this act or that he has committed any of the acts defined in section twenty-eight (28) [66-1037] of this act as unprofessional conduct, it shall refrain from issuing a license. Thereupon, the board shall mail to applicant, at his last address of record with the board, written notification of its decision together with at least thirty (30) days' written notice of a time and place to appear before the board in person, or by counsel, to present such statements, evidence and argument as he may desire to offer. In the event the applicant without cause fails to appear pursuant to such notice, or, after hearing held, the board determines he is not entitled to a license, the board shall then refuse to grant such license.

History: En. Sec. 27, Ch. 338, L. 1969.

66-1037. Unprofessional conduct. The words "unprofessional conduct" as used in this act are declared to mean:

(a) resorting to fraud, misrepresentation or deception in applying for or in securing a license or in taking the examination provided for in this act;

(b) performing abortion contrary to law;

(c) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury or condition of any person can be cured;

(d) willful disobedience of the lawfully adopted rules and regulations of the board of medical examiners;

(e) conviction of any offense involving moral turpitude, or the conviction of a felony involving moral turpitude, the judgment of any such conviction, unless pending upon appeal, shall be conclusive evidence of unprofessional conduct;

(f) administering, dispensing or prescribing any narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(g) conviction or violation of any federal or state law regulating the possession, distribution or use of any narcotic or hallucinatory drug as defined by the federal food and drug administration; the judgment or conviction, unless pending upon appeal, shall be conclusive evidence of such unprofessional conduct;

(h) habitual intemperance or excessive use of narcotic drugs or of alcohol or of any other drug or substance to the extent that such use impairs the user physically or mentally;

(i) conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public;

(j) resorting to fraud, misrepresentation or deception in the examination or treatment of a person, or in billing or reporting to a person, company, institution or organization;

(k) testifying in court on a contingency basis;

(l) conspiring to misrepresent or willfully misrepresenting, medical conditions improperly to increase or decrease a settlement or award, verdict or judgment;

(m) the aiding or abetting, in the practice of medicine, of any person not licensed to practice medicine as defined under this act or of any person whose license to practice medicine is suspended;

(n) gross malpractice, or negligent practice;

(o) practicing medicine as the partner, agent or employee of, or in joint venture with, any person who does not hold a license to practice medicine within this state; provided, however, that nothing herein shall prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation as provided in chapter 21 of Title 15 of the Revised Codes of Montana, 1947, and provided further that this limitation shall not have application to a single consultation with or a single treatment by a person or persons duly licensed to practice medicine and surgery in another state or territory of the United States or foreign country;

(p) violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this act, or the rules and regulations authorized herein.

(q) any other act, whether hereinabove specifically enumerated or not, which, in fact, constitutes unprofessional conduct.

History: En. Sec. 28, Ch. 338, L. 1969.

66-1038. Revocation or suspension of license—probation. (1) The board may, whenever it has been brought to its attention that there is reason to suspect that any person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable, safely, to engage in the practice of medicine, or has procured his license to practice medicine by fraud or misrepresentation or through mistake, or has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent or when any condition exists which impairs his intellect or judgment to such an extent as to incapacitate him for the safe performance of professional duties; or

(b) has been guilty of unprofessional conduct as defined in this act; or

(c) has practiced medicine while his license was suspended or revoked; or

(d) has, while under probation, violated the terms thereof; make an investigation, including requiring such person to submit to a physical examination or a mental examination or both by a physician or physicians selected by the board whenever it shall appear in the best interests of the public that such evaluation be secured, to determine the probability of the existence of such conditions or the commission of any such offenses. The board may examine and scrutinize the hospital records and reports of any licensee as part of such examination and copies thereof shall be released to the board upon written request. If the board has reasonable cause to believe that such probability exists, the executive secretary or president shall mail to such person, at his last address of record with the board, a specification of the charges against him, together with a written citation of the time and place of hearing thereon, advising him that he may be present in person, and by counsel if he so desires, to offer evidence and be heard in his defense; the time fixed for such hearing shall not be less than thirty (30) days from the date of mailing the notice.

(2) Any person including any member of the board, may file a sworn complaint with the board against any person having a license to practice medicine in this state, charging him with the commission of any of the offenses set forth in section twenty-eight (28) [66-1037], or subsection one (1) of this section, which complaint shall set forth a specification of the charges. When such complaint is filed, the executive secretary shall mail a copy thereof to the person so accused, at his last address of record with the board, together with a written citation of the time and place of a hearing thereon, advising him that he may be present in person, and by counsel if he so desires, to offer evidence and be heard in his defense; the time fixed for such hearing shall be not less than thirty (30) days from the date of mailing the notice.

(3) At the time and place fixed for a hearing before the board as provided in subsections (1) and (2) of this section, or at any time and place to which the matter may be continued, the board shall receive evidence upon the subject under consideration and shall accord the per-

son against whom charges are preferred a full and fair opportunity to be heard in his defense and shall after consideration adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the conditions referred to in section twenty-eight (28) [66-1037], or subsection one (1) of this section do not exist with reference to such person or if he be found not guilty, the board shall dismiss the charges or complaint, but if the board does find that the conditions referred to in section twenty-eight (28) [66-1037] or in subsection one (1) of this section do exist and such person be found guilty, the board shall:

- (a) revoke his license; or
- (b) suspend his right to practice for a period not exceeding one (1) year; or
- (c) suspend its judgment of revocation upon the terms and conditions to be determined by the board; or
- (d) place him upon probation; or
- (e) take such other action in relation to disciplining him as the board in its discretion may deem proper.

(4) The executive secretary of the board in all cases of revocation, suspension or probation shall enter in its records the facts of such action, and of any subsequent action of the board with respect thereto.

(5) Upon the expiration of the term of suspension, the licensee shall be reinstated by the board, provided the holder thereof shall furnish the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced medicine in this state during the term of suspension. If such evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or if not restored to good health or if such evidence shows he has practiced medicine in this state during the term of suspension, the board shall revoke the license at a hearing, notice of which and the procedure of which shall be as hereinabove provided, which revocation shall then be final and absolute.

(6) In case any person holding a license to practice medicine under this act shall, by any final order or adjudication of any court of competent jurisdiction, be adjudged to be mentally incompetent or insane, or addicted to the use of narcotics, his license may be suspended forthwith by the board, and anything in this act to the contrary notwithstanding, such suspension shall continue until the licensee is found or adjudged by such court to be restored to reason or cured, or until he is duly discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board.

History: En. Sec. 29, Ch. 338, L. 1969.

66-1039. Reconsideration and review of actions of board. The board may, on its own motion or upon application, at any time after refusal, suspension or the revocation of a license, or of probation or of other action as in this act provided, reconsider its prior action and grant, reinstate or restore such license or terminate the suspension thereof

or terminate probation or reduce the severity of its prior disciplinary action; provided that the taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

History: En. Sec. 30, Ch. 338, L. 1969.

66-1040. Appeals from decision of board. (1) The action of the board in refusing to grant or in revoking or suspending a license or in administering any other disciplinary action hereunder may be reviewed by the district court of the county in which such revocation was made or other action taken. Such review shall be by an appeal taken from the action of said board. The appeal is taken by serving notice of appeal upon the executive secretary of the board of medical examiners and the attorney general of the state within thirty (30) days after notice from the board of medical examiners of its decision and by filing within the same time with the clerk of the proper district court a verified copy of the decision from which appeal is taken together with a verified copy of any charge or charges preferred against the appellant and filed with the board of medical examiners.

(2) The appellant is required, at the time of filing such appeal, to furnish and file with the clerk of the court a good and sufficient bond, to be approved by the clerk, with two (2) good and sufficient sureties, in the sum of three hundred dollars (\$300) guaranteeing the payment of all costs of the appeal should the case be decided against the appellant.

History: En. Sec. 31, Ch. 338, L. 1969.

66-1041. Violations—penalties. (1) Any person practicing medicine within the state without complying with the provisions of this act, or any association or corporation, (except a professional service corporation provided for by chapter 21 of Title 15 of the Revised Codes of Montana, 1947) practicing medicine within this state, or any person, association or corporation violating any of the provisions of this act or any officer or director of any such association or corporation, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than two hundred fifty dollars (\$250) or more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not less than ninety (90) days or more than one (1) year, or by both, and each daily failure to comply with, or each daily violation of, the provisions of this act, shall constitute a separate offense.

(2) Any person presenting or attempting to file as his own, the diploma, license or certificate, or credentials of another, or who shall give either false or forged evidence of any kind to the board, or any member thereof, in connection with an application for a license to practice medicine, or who shall practice medicine under a false or assumed name, or who shall falsely impersonate another licensee of a like or different name, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state penitentiary for a term of not less than one (1) year or more than ten (10) years at hard labor.

History: En. Sec. 32, Ch. 338, L. 1969.

Physiotherapy

An alleged physiotherapist who attempted to remove moles from patient's body

by use of surgical diathermy machine was guilty of unlawful practice of medicine. State v. Moore, 141 M 86, 375 P 2d 218, 221.

66-1042. Annual registration fees—limiting authority to impose registration fees. (1) In addition to the respective license fees required of applicants, every licensed physician actively practicing medicine within the state of Montana shall pay each and every year to the executive secretary of the board, an annual registration fee, not to exceed the sum of twenty-five dollars (\$25), as may be prescribed by the board, and approved by the budget director. In the event any person licensed to practice medicine absents himself from the state for a period of one (1) or more years, or does not engage in active practice within the state of Montana, he may continue his license in good standing by the payment of five dollars (\$5) each year, or at the discretion of the board, he may be reinstated upon the payment of a fee of five dollars (\$5) for each year of absence or inactive practice.

(2) Such annual payments for registration shall be made prior to April 1 in each and every year, and a receipt acknowledging payment of the annual registration fee shall be issued by the executive secretary of the board. The board shall mail registration notices, at least sixty (60) days before such registration is due. In case of default in the payment of the annual registration fee by any person licensed to practice medicine who is actively practicing medicine in Montana, his underlying certificate to practice medicine may be revoked by the board upon thirty (30) days' notice given to the delinquent of the time and place of considering such revocation. A registered or certified letter addressed to the last known address of the person failing to comply with the requirements of annual registration, as such address appears upon the records of the board, shall constitute sufficient notice of intention to revoke his underlying certificate, but no certificate shall be revoked for such nonpayment if the person authorized to practice medicine, and so notified, shall pay such annual registration fee before or at the time fixed for consideration of revocation together with a delinquency penalty of ten dollars (\$10); provided, further, that said board may collect any such dues by an action at law.

(3) No registration or license fee shall be imposed upon any licensee under this act by a municipality or any other subdivision of the state.

History: En. Sec. 33, Ch. 338, L. 1969.

66-1043. Board of medical examiners fund—deposits therein—withdrawals therefrom—reports required. There is hereby established a fund to be known as the "earmarked revenue fund" for the use of the board of medical examiners. All moneys from whatever source received by said board shall be turned over by the executive secretary of the board, to the state treasurer and shall be by the state treasurer deposited in the "earmarked revenue fund" for the use of the board of medical examiners and as appropriated by the legislature. All withdrawals there-

from shall be by warrant issued by the state treasurer on the basis of a properly executed claim. In the case of a deficiency the reserves in the "earmarked revenue fund" may be used upon approval by the budget director and the governor. Before September 1 of each even-numbered year, the board shall submit a written report to the governor providing him the information required by law.

History: En. Sec. 34, Ch. 338, L. 1969.

66-1044. Transfer of records — supplies and moneys. All records, supplies and equipment of the state board of medical examiners, hereby abolished shall be transferred to the board created by this act, and all moneys remaining to the credit of the "earmarked revenue fund" for the use of the board of medical examiners shall, after the payment of all claims, be transferred and credited to the board created by this act.

History: En. Sec. 35, Ch. 338, L. 1969.

66-1045. Injunctive relief — manner of charging violation of act. The state board of medical examiners, notwithstanding any other provision contained in this act, may maintain an action to enjoin any person from engaging in the practice of medicine, until a license to practice medicine be procured. Any person who has been so enjoined who shall violate such injunction shall be punished for contempt of court; provided, that such injunction shall not relieve such person so practicing medicine without a license from a criminal prosecution therefor as is provided by law, but such remedy by injunction shall be in addition to any remedy provided for the criminal prosecution of such offender. In charging any person in a complaint for injunction or in an affidavit, information or indictment with a violation of this law by practicing medicine, without a license, it shall be sufficient to charge that he did, upon a certain day and in a certain county engage in the practice of medicine, he not having any license to do so, without averring any further or more particular facts concerning the same.

History: En. Sec. 36, Ch. 338, L. 1969.

66-1046. Subpoena — how to issue — fees — service. Whenever the board in the transaction of any of its business or in the conduct of any hearing, or whenever any person interested in such business or hearing desires to secure the presence for testimony of any person before the board, the board, or such person, may procure a subpoena from the clerk of district court of the county in which the business is to be transacted or the hearing held. The clerk of the district court shall issue the subpoena in the name of the state of Montana, commanding the person whose presence and testimony is desired to appear before the board at a certain time and place fixed by the board then and there to testify in the manner of such business or in such hearing. The subpoena shall be served in the same manner as a subpoena for a trial in the district court and shall be substantially in the same form. Fees or other charges demanded by a person commanded to appear and testify shall

be only those which may be demanded by witnesses in causes in the district court and under the same circumstances.

History: En. Sec. 37, Ch. 338, L. 1969.

66-1047. Failure to appear or testify—penalty. Any person subpoenaed in the manner provided in section thirty-seven (37) [66-1046], who fails or refuses to appear and testify, shall be dealt with by the district court from which such subpoena was issued in the same manner and to the same effect as though the subpoena had commanded him to appear and testify in a cause on trial in said court.

History: En. Sec. 38, Ch. 338, L. 1969.

66-1048. Notice of change of address or name. Whenever any person shall apply for a license of any type to practice medicine in the state of Montana such person shall designate in his application his correct and official address to which the board shall send all communications, notices, orders, citations or other process, if any, affecting him and whenever any such person shall change his address or when the name of a licensee is changed by marriage or otherwise, such person shall within thirty (30) days notify the board in writing of his old and new address or of such former name and new name. This information shall be entered promptly by the executive secretary of the board in the official records of the board. It is hereby declared to be the duty of each person licensed to practice medicine in the state of Montana to keep the board advised at all times of his correct mailing address and of his correct name.

History: En. Sec. 39, Ch. 338, L. 1969.

66-1049. Service of notice or other process. Whenever in this act service of any form of notice, order, citation or other process is authorized and directed to be made upon any licensee practicing medicine in the state of Montana such service may be made upon such licensee by mailing such notice, order, citation or other process to him, by registered mail, at his address as shown on the records of the board. Such service shall be deemed complete when such notice, order, citation or other process shall have been registered in the United States post office with sufficient postage affixed thereto and addressed to him at the address shown on the official records of the board.

In lieu of service by registered mail, actual personal service of such notice, order, citation or other process, either within or without the state of Montana, upon any licensee shall be sufficient to vest the board with jurisdiction of such licensee.

History: En. Sec. 40, Ch. 338, L. 1969.

Saving Clause

Section 41 of Ch. 338, Laws 1969 read: "If any section, subsection, sentence, clause or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act."

Effective Date

Section 42 of Ch. 338, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 13, 1969.

Repealing Clause

Section 43 of Ch. 338, Laws 1969 read "Sections 66-1001, 66-1002, 66-1003, as

amended by section 1, chapter 119 of the Laws of 1957, sections 66-1004 through 66-1009, both inclusive of the Revised

Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

CHAPTER 12—NURSING—REGULATION OF PRACTICE

Section 66-1221. Purpose.

66-1222. Citation of act—definition of board—identification of board when administering act for professional nursing and for practical nursing—definition of terms.

66-1228. License—by examination—by endorsement without examination—license fees.

66-1231. Qualifications of applicants for licensed practical nurse.

66-1232. License of practical nurse by examination—by endorsement without examination.

66-1233. Waiver of certain requirements for licensing practical nurses before July 1, 1970.

66-1234. Fee.

66-1236. Renewal of license.

66-1237. Disposition of fees.

66-1242. Exemption of persons from act—when and under what circumstances.

66-1243. Violation of act—penalties.

66-1221. Purpose. In order to safeguard life and health (a) any person practicing or offering to practice professional nursing in this state for compensation or personal gain, shall be required to submit evidence that he or she is qualified so to practice, and shall be licensed as hereinafter provided; and

In order to safeguard life and health (b) any person practicing or offering to practice practical nursing in this state for compensation or personal gain shall be required to submit evidence that he or she is qualified so to practice, and shall be licensed as hereinafter provided.

After January 1, 1954, it shall be unlawful for any person to use any title, abbreviation, sign, card, or device to indicate that such person is (a) a registered, professional nurse (b) a licensed practical nurse unless such person has been duly licensed under the provisions of this act, and the license of such person shall be valid and in force in compliance with the provisions of this act.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967.

certified or licensed practical nurse" after "in this state" in the second paragraph; deleted "certified or" before "licensed practical nurse" in the third paragraph; and made minor changes in punctuation.

Amendments

The 1967 amendment substituted "for compensation or personal gain" for "as a

66-1222. Citation of act—definition of board—identification of board when administering act for professional nursing and for practical nursing—definition of terms. This act may be cited as the Montana Nursing Practice Act.

The use of the feminine gender shall include the masculine gender and vice versa.

As used in this act the term or word "board" means the Montana state board of nursing created by this act, with dual functions (a) in the field of professional nursing and (b) in the field of practical nursing, and ir-

respective of the number of members of the board when functioning in either of said fields. In all matters relating to "professional nursing" the board shall consist of five (5) members to be qualified and appointed as hereinafter provided. In all matters relating to "practical nursing" the board shall consist of eight (8) members, five (5) of whom shall be identical with the five (5) member board, and the remaining three (3) members to be qualified and appointed as hereinafter provided. The board of five (5) members may for convenience be referred to as the Montana state board of nursing followed by the words "professional nursing administration," and the board of eight (8) members may, for convenience, be referred to as the Montana state board of nursing, followed by the words "practical nursing administration."

The practice of nursing embraces two classes of nursing service and activity, defined, respectively, as follows:

(1) The practice of professional nursing means the performance for compensation of any act in the observation, care and counsel of the ill, injured or infirm, or in the maintenance of health or prevention of illness of others, or in the supervision and teaching of other personnel, or the administration of medications and treatments as prescribed by a person licensed in this state to prescribe such medications and treatments; requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical and social science. The foregoing shall not be deemed to include acts of diagnosis or prescription of therapeutic or corrective measures.

(2) The practice of practical nursing means the performance for compensation in the care of the ill, injured or infirm, of acts selected by and performed under the direction of an R.N., or a person licensed in this state to prescribe such medications and treatments; and not requiring the substantial specialized skill, judgment and knowledge required in professional nursing.

History: En. Sec. 2, Ch. 243, L. 1953; amd. Sec. 2, Ch. 291, L. 1967.

for "or" before "members of the board" in the third paragraph; and rewrote subparagraphs (1) and (2) of the fourth paragraph. For previous text, see parent volume.

Amendments

The 1967 amendment substituted "of"

66-1228. License—by examination—by endorsement without examination—license fees. (1) By examination. The applicant for license to practice professional nursing shall be required to pass a written examination in such subjects as the board, acting under the professional nursing administration, may determine. Each written examination may be supplemented by an oral or practical examination. Upon successfully passing such examination, the board shall issue to the applicant a license to practice nursing as a registered professional nurse. The applicant shall pay a fee of twenty-five dollars (\$25) at the time the application is submitted, which fee shall be returned to the applicant, if the application is withdrawn not later than five (5) days prior to the date of examination, or, if the examination is not taken, subject to deduction by the board of one dollar (\$1) per subject of the examination which shall be retained by the board.

(2) By endorsement without examination. (a) The board, acting under the professional nursing administration, may issue a license to practice nursing as a registered professional nurse without examination, to an applicant who has been duly licensed as a registered professional nurse under the laws of another state, territory or country, if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee of twenty-five dollars (\$25) at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to final submission of the application to the board, subject to deduction of five dollars (\$5), to be retained by the board.

(b) An applicant may, pending application for a professional nursing license pursuant to paragraph (a) immediately preceding practical professional nursing as an employee of a physician in her capacity as professional nurse or in a hospital or public health agency for a period not longer than three (3) months from the date the board acknowledges receiving from such nurse a duly completed statement, on a form provided by the board, of intention so to practice. Such statement shall consist of (1) an affidavit by such nurse and (2) an affidavit by the physician employer or by the administrator, assistant administrator, or director of nursing of a hospital or public health agency where such nurse intends to practice professional nursing. The affidavit of such nurse and the affidavit of such physician employer or administrator, assistant administrator or director of nursing of such hospital or public health agency shall contain the information deemed by the board to be necessary for such statement. This paragraph shall not be construed to permit such nurse to practice for more than said three (3) months period, or, in any event, after being notified by the board that application for a license has been denied, or, in all cases, after being notified by the board to cease and desist such practice; notice in all cases shall be given by registered or certified mail to the address of applicant as the same appears in the statement of applicant.

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967.

Amendments

The 1963 amendment increased the fee for license by endorsement, as set forth in paragraph (2) (a), from \$20 to \$25.

The 1967 amendment in subsection (2) (b) substituted "practical" for "practice" before "nursing"; substituted "three (3)" for "six (6)" before "months from the date"; substituted "three (3)" for "six (6)" before "months period"; and inserted "or certified" before "mail to the address."

66-1231. Qualifications of applicants for licensed practical nurse. An applicant for a license to practice as a licensed practical nurse shall submit to the board acting under the practical nursing administration written evidence, verified by oath, that the applicant:

(1) Has successfully completed at least an approved four (4) year high school course of study, or the equivalent thereof as determined by the state department of public instruction;

(2) Has successfully completed the prescribed curriculum in an ap-

proved school of practical nursing and holds a diploma or certificate therefrom;

(3) Shall meet such other qualification requirements as the board, acting under the practical nursing administration, may prescribe.

History: En. Sec. 11, Ch. 243, L. 1953; amd. Sec. 4, Ch. 291, L. 1967.

ing administration may prescribe"; and, in subdivision (2), deleted the proviso which read, "provided that any person who has completed the prescribed course in any recognized school for practical nursing within the state of Montana prior to the effective date of this act, shall be considered to have met this requirement."

Amendments

The 1967 amendment substituted subdivision (1) for "Has completed at least two (2) years of high school, or its equivalent, and such other preliminary qualification requirements as the practical nursing

66-1232. License of practical nurse by examination—by endorsement without examination. (1). * * * [Same as parent volume.]

(2) By endorsement—without examination. (a) The Montana state board of nursing—practical nursing administration, may issue a license to practice as a licensed practical nurse without examination to any applicant who has been duly licensed or registered as a licensed practical nurse or person entitled to perform like services under a different title under the laws of another state, territory or country, if in the opinion of the practical nursing administration the applicant meets the requirements for practical nurses in this state.

(b) An applicant may, pending application for a practical nursing license pursuant to paragraph (a) immediately preceding, practice practical nursing as an employee of a physician in her capacity as practical nurse or in a hospital or public health agency for a period of not longer than three (3) months from the date the board acknowledges receiving from such practical nurse a duly completed statement, on a form provided by the board, of intention so to practice. Such statement shall consist of (1) an affidavit by such practical nurse and (2) an affidavit by the physician employer or by the administrator, assistant administrator, or director of nursing of a hospital or public health agency where such practical nurse intends to practice practical nursing. The affidavit of such nurse and the affidavit of such physician employer or administrator, assistant administrator or director of nursing of such hospital or public health agency shall contain the information deemed by the board to be necessary for such statement.

This paragraph shall not be construed to permit such nurse to practice for more than said three (3) months period, or, in any event, after being notified by the board that application for a license has been denied, or, in all cases, after being notified by the board to cease and desist such practice; notice in all cases shall be given by registered or certified mail to the address of applicant as the same appears in the statement of application.

History: En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967.

Amendments

The 1967 amendment inserted the letter designation "(a)" before "The Montana state board" in subsection (2), and added subsection (2)(b).

66-1233. Waiver of certain requirements for licensing practical nurses before July 1, 1970. All applications for license under this waiver section of the within act must be made and delivered to the board before April 1, 1970. The board will issue licenses thereon in conformity with this section no later than July 1, 1970.

The Montana state board of nursing, practical nursing administration, may issue a license to practice as a licensed practical nurse to any person who shall submit written evidence, verified by oath, that said applicant:

- (1) Is at least twenty-five (25) years of age;
- (2) Is of good moral character;
- (3) Is in good health;
- (4) Has successfully completed at least an approved four (4) year high school course of study, or the equivalent thereof as determined by the state department of public instruction;
- (5) Has lived in and has been caring for the sick as a full time employee of a recognized health care facility in the state for two (2) out of the three (3) years immediately prior to July 1, 1967. The application must be endorsed by written statements verified by oath of (a) two professional nurses licensed in Montana, or (b) a doctor of medicine licensed in Montana and the registered professional nurse director of nursing in the health care facility where employed, which endorsers must have personal knowledge of the applicant's qualifications.

The applicant shall be required to pass a written examination in such subjects as the board—practical nursing administration, may determine. Each examination may be supplemented by an oral or practical examination.

(6) The presentation of a valid license issued by the Montana state board of nursing, practical nursing administration shall be prima facie evidence that the applicant meets the qualifications of this act for licensure.

History: En. Sec. 13, Ch. 243, L. 1953; amd. Sec. 6, Ch. 291, L. 1967.

Amendments

The 1967 amendment changed the date at the end of the first sentence from July 1, 1955 to April 1, 1970; inserted the second sentence in the first paragraph; increased the age specified in clause (1) from twenty to twenty-five years; inserted clause (4); redesignated former clause (4) as (5); inserted "as a full time employee

of a recognized health care facility" in clause (5); changed the date in clause (5) from July 1, 1953 to July 1, 1967; substituted "professional nurses" for "doctors of medicine" in clause (a); substituted "the registered professional nurse director of nursing in the health care facility where employed" for "a registered professional nurse director of nursing of any licensed hospital within the state of Montana" in clause (b); added paragraph (6); and made another minor change.

66-1234. Fee. The applicant applying for a license to practice as a licensed practical nurse shall pay a fee of twenty-five dollars (\$25.00) to the board at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than five (5) days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of five dollars (\$5.00) to be retained by the board.

History: En. Sec. 14, Ch. 243, L. 1953;
amd. Sec. 2, Ch. 195, L. 1963.

Amendment

The 1963 amendment increased the fee from \$15 to \$25; and made a minor change in phraseology.

66-1236. Renewal of license. The license of every person licensed under the provisions of the act, either as a registered nurse, or a licensed practical nurse, must be annually renewed, except as hereinafter provided. On or before December first of each year, the board shall mail an application form for renewal of license to every person to whom a license was issued or renewed during such year. The applicant shall carefully complete and subscribe the application form and return it to the board with a renewal fee of five dollars (\$5.00) before January first, next. Upon receipt of the application and fee the board shall verify the accuracy of the application against its record, and from such other sources as it deems reliable, and issue to the applicant a certificate of renewal for the current year beginning January first and expiring December thirty-first, following. Such certificate of renewal shall render the holder thereof a legal practitioner of nursing for the period stated in the certificate of renewal.

Any licensee who allows her license to lapse by failing to renew the license as provided above may be reinstated by the board upon satisfactory explanation for such a failure to renew license and on payment of the current renewal fee prescribed by the board.

Any person practicing nursing during any time following the date her license has expired by lapse of time shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this act.

History: En. Sec. 16, Ch. 243, L. 1953;
amd. Sec. 3, Ch. 195, L. 1963.

Amendment

The 1963 amendment increased the fee specified in the third sentence of the first paragraph from \$2.00 to \$5.00.

66-1237. Disposition of fees. All fees received by the Montana state board of nursing, and all fines collected under this act shall be paid over by the executive secretary to the state treasurer for the credit of the earmarked revenue fund for the use of the state board of nursing.

History: En. Sec. 17, Ch. 243, L. 1953;
amd. Sec. 118, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the former first three sentences of the first paragraph; substituted "the earmarked revenue fund

for the use of the state board of nursing" at the end of the paragraph for "said fund, as required by law"; and deleted the former second and third paragraphs. For text of deleted provisions, see parent volume.

66-1242. Exemption of persons from act—when and under what circumstances. No provisions of this law shall be construed as prohibiting gratuitous nursing by friends or members of the family, or as prohibiting the incidental care of the sick by domestic servants, or persons primarily employed as housekeepers; or as prohibiting nursing assistance in the case of an emergency; nor shall it be construed as prohibiting the practice of nursing by students enrolled in approved schools of nursing or approved courses; nor by the graduates of such schools or courses pending the results of the first licensing examination scheduled by the

board following such graduation; nor shall it be construed as prohibiting the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six (6) months in length, provided such person does not represent or hold herself to be a nurse licensed to practice in this state; nor shall it be construed as prohibiting the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of her official duties.

Nothing in this act shall be construed as prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof.

This act shall not be construed as conferring any authority to practice (a) medicine, or (b) surgery, or (c) any combination thereof, or (d) to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana, nor (e) to permit any person to undertake the treatment of disease by any of the methods employed in such arts, unless the licensee shall have qualified under the applicable law or laws licensing the practice of such profession(s) or healing art(s) in the state of Montana.

History: En. Sec. 22, Ch. 243, L. 1953;
amd. Sec. 7, Ch. 291, L. 1967.

Amendments

The 1967 amendment deleted "nor shall this act prohibit the practice of practical nursing for hire or otherwise by any per-

son, provided that such person shall not use in connection with her name any designation tending to imply that she is a licensed practical nurse unless then duly licensed so to practice under this act" at the end of the second paragraph, and made minor changes in punctuation.

66-1243. Violation of act—penalties. It shall be a misdemeanor for any person including any corporation, association or individual to:

(1) to (3). * * * [Same as parent volume.]

(4) Practice practical nursing as defined by this act unless duly licensed to do so under the provisions of this act;

(5) Use in connection with her name any designation tending to imply that she is a registered professional nurse or a licensed practical nurse unless duly licensed so to practice under provisions of this act;

(6) Practice nursing during the time her license issued under the provisions of this act shall be suspended, revoked or on inactive status;

(7) Conduct a school of nursing or a course unless the school or course has been approved by the board;

(8) Otherwise violate any provisions of this act.

Such misdemeanor shall be punishable by a fine of not less than one hundred dollars (\$100) for the first offense. Each subsequent offense shall be punishable by a fine of three hundred dollars (\$300), or by imprisonment of not more than six (6) months in the county jail, or by both such fine and imprisonment.

The several district courts within their respective county jurisdiction are hereby empowered to hear, try and determine such misdemeanor

and to impose in full the punishment and fines herein prescribed. It shall be necessary to prove, in any prosecution for misdemeanor under this section, only a single act prohibited by law, or a single holding out, or an attempt, without proving a general course of conduct in order to constitute a violation.

History: En. Sec. 23, Ch. 243, L. 1953; (8), and made minor changes in punctuation. amd. Sec. 8, Ch. 291, L. 1967.

Amendments

The 1967 amendment inserted new subparagraph (4), renumbered old subparagraphs (4) through (7) as (5) through

Repealing Clause

Section 9 of Ch. 291, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 13—OPTOMETRY—REGULATION

- Section 66-1302. Provisions regulating practice of optometry.
 66-1307. Renewal of registration—revocation—fees.
 66-1311. Compensation of examiners—report.
 66-1314. Penalty for violations.
 66-1315. Prosecution of violations—counsel for board.

66-1302. (3156) Provisions regulating practice of optometry. It shall be unlawful for any person:

1. to 12. * * * [Same as parent volume.]

Whenever the Montana state board of examiners in optometry has reasonable cause to believe that any person is violating any provision of this section, or any lawful rule or regulation issued under this chapter, it may, in addition to all other remedies and provisions provided for in this chapter and without prejudice thereto, bring an action on the relation of the people of the state of Montana in the county in which said violation should occur to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. Said board is hereby empowered to employ legal counsel to prosecute such actions. In any such action, and upon notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as may be deemed proper by the judge of the district court in which county said violation may have occurred, said district court hereby being vested with jurisdiction over such injunction action. Provided, however, that this act shall not be construed to apply to physicians and surgeons authorized to practice under the laws of the state of Montana nor to any person acting under the supervision of any such physicians or surgeons, nor to any person as excepted from the operation of this chapter by the provisions of section 66-1316, R.C.M. 1947.

History: En. Ch. 138, L. 1907; re-en. Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R. C. M. 1921; amd. Sec. 1, Ch. 171, L. 1925; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967.

Amendments

The 1967 amendment added the last paragraph, dealing with the power of the optometry board to enjoin violations.

66-1307. (3161) Renewal of registration—revocation—fees. Every registered optometrist who desires to continue the practice of optometry in this state shall annually on or before the second day of July of each year pay to the secretary of said board a renewal fee not to exceed the sum of twenty dollars (\$20.00) in return for which a renewal of registration shall be issued. The board may present to registered optometrists at least one annual educational program. If any person shall fail or neglect to procure his annual renewal of registration, his certificate of registration shall be revoked by said board; provided, however, that no certificate of registration shall be revoked without ninety (90) days' notice having been given to the delinquent, who within such period shall have the right to the renewal of his certificate of registration on the payment of the renewal fee with a penalty of twenty-five dollars (\$25.00).

History: En. Ch. 138, L. 1907; re-en. Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R. C. M. 1921; amd. Sec. 4½, Ch. 171, L. 1925; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "The board may present" for "The board may use not to exceed ten dollars (\$10.00) from each renewal fee for the purpose of presenting" at the beginning of the second sentence.

66-1311. (3165) Compensation of examiners—report. Each member of the board may receive as compensation the sum of twenty-five dollars (\$25.00) and necessary expenses for each day actually engaged in the duties of his office. All moneys received by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of examiners in optometry. The board shall report as provided in section 2 [82-4002] of this act.

History: En. Ch. 138, L. 1907; re-en. Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R. C. M. 1921; amd. Sec. 5, Ch. 171, L. 1925; amd. Sec. 5, Ch. 252, L. 1959; amd. Sec. 121, Ch. 147, L. 1963; amd. Sec. 23, Ch. 93, L. 1969.

Amendments

The 1963 amendment substituted "Each member of the board" at the beginning of the section for "Out of the funds coming into the possession of said board, each member thereof"; and substituted the second sentence for a sentence and clauses reading, "Such sums shall be paid from

the fees received by said board under the provisions of this act, and no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of said expenses, as above provided for, shall be held by the secretary as a special fund for meeting expenses of said board, and carrying out the provisions of this act, and he shall give such bonds as the board shall from time to time direct, and."

The 1969 amendment substituted the reference to the reporting requirements of section 82-4002 for provision requiring an annual report to the governor.

66-1314. (3167) Penalty for violations. Any person who shall violate any of the provisions of this act or the rules and regulations of the state board of examiners shall be decreed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars (\$200.00) and not more than five hundred dollars (\$500.00), or by imprisonment in the county jail not exceeding six (6) months, or by both fine and imprisonment as the court may determine. All fines thus received shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of examiners in optometry.

History: En. Ch. 138, L. 1907; re-en. Sec. 1619, Rev. C. 1907; re-en. Sec. 3167, R. C. M. 1921; amd. Sec. 8, Ch. 171, L. 1925; amd. Sec. 6, Ch. 130, L. 1939; amd. Sec. 122, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of examiners in optometry" for "paid into the treasury of the board" at the end of the section.

66-1315. (3168) Prosecution of violations—counsel for board. It is the duty of a county attorney of a county wherein a violation under this act is alleged to have occurred to prosecute such violation in the district court in said county. The state attorney general shall appear as counsel for the board in the state supreme court.

History: En. Ch. 138, L. 1907; re-en. Sec. 1620, Rev. C. 1907; re-en. Sec. 3168, R. C. M. 1921; amd. Sec. 1, Ch. 204, L. 1965.

Amendment

The 1965 amendment completely rewrote this section. For previous text, see parent volume.

CHAPTER 14—OSTEOPATHY—REGULATION OF PRACTICE

Section 66-1403. Regulation osteopathic licenses, educational qualifications and renewal.

66-1405. Subjects of examination—appeal.

66-1410. Compensation of board—report.

66-1403. (3127) Regulation osteopathic licenses, educational qualifications and renewal. (1). * * * [Same as parent volume.]

(2) Each individual, after the first year of registration, holding a certificate to practice under this act and who is in active practice in this state, shall on or before the first day of April of each year pay a renewal fee of fifteen dollars (\$15.00) to the secretary of the board of osteopathic examiners; and each individual, after the first year of registration, holding a certificate to practice under this act, who is not in active practice, shall on or before the first of April of each year pay a renewal fee of seven dollars and fifty cents (\$7.50) to the secretary of the board. The secretary of the board shall before the 15th of March of each year send a notice to each individual holding a valid certificate to practice under this act and from whom a fee is due stating that such fee is due.

(3) The certificate to practice under this act automatically becomes void when the renewal fee is not paid at the time named. Provided that the board may reinstate a practitioner whose certificate has lapsed upon the payment of all back renewal fees or upon the payment of fifty dollars (\$50.00) if the lapsed fees exceed that amount.

History: En. Ch. 51, L. 1905; re-en. Sec. 1596, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R. C. M. 1921; amd. Sec. 1, Ch. 79, L. 1925; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967.

Amendments

The 1967 amendment, in subsection (2), increased the renewal fee for licenses of those osteopaths in active practice from \$2 to \$15 a year, and those not in active practice, from \$1 to \$7.50; and, in subsection (3), increased the maximum payment for renewal of licenses which have lapsed from \$10 to \$50.

66-1405. (3129) Subjects of examination—appeal. (1) and (2). * * * [Same as parent volume.]

(3) After examination the board shall grant a license to such applicants as shall pass the examination to practice osteopathy in the state of Montana, which license shall be granted by not less than two members of said board, attested by the seal thereof. The fee for such examination and license shall be twenty dollars (\$20.00).

History: En. Ch. 51, L. 1905; re-en. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, R. C. M. 1921; amd. Sec. 2, Ch. 108, L. 1953; amd. Sec. 145, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted the words

“For the support and maintenance of said board” at the beginning of the second sentence of subsection (3); and deleted the words “which shall be paid in advance to the secretary of said board to defray the expenses thereof” at the end of the second sentence of subsection (3).

66-1410. (3134) Compensation of board—report. Each of the members of said board may receive as compensation a sum not to exceed twenty dollars (\$20) for each day actually engaged in the duties of their office, together with all legitimate and necessary expenses incurred in attending the meetings of said board. The fees coming into said board shall be deposited into the state treasury to the credit of the earmarked revenue fund for the use of the state board of osteopathic examiners. Said board shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 10, p. 51, L. 1901; re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907; re-en. Sec. 3134, R. C. M. 1921; amd. Sec. 146, Ch. 147, L. 1963; amd. Sec. 2, Ch. 206, L. 1967; amd. Sec. 24, Ch. 93, L. 1969.

Amendments

The 1963 amendment deleted the words “Out of the funds coming into the possession of said board” at the beginning of the section; and substituted the second sentence for sentences reading, “No part of the compensation or other expenses of said board shall be paid out of the state treasury. The fees coming into the treasury of said board shall be paid out upon a warrant of the president and secretary

thereof in payment of the compensation and expenses of said board in carrying out the provisions of this act.”

The 1967 amendment substituted “a sum not to exceed twenty dollars (\$20.00)” for “the sum of five dollars (\$5.00)” in the first sentence.

The 1969 amendment substituted the reference to the reporting requirements of section 82-4002 for provision requiring an annual report to the governor.

Effective Date

Section 3 of Ch. 206, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

CHAPTER 15—PHARMACY—REGULATION OF SALE OF DRUGS AND MEDICINES

- Section 66-1504. Montana state board of pharmacy—powers of board.
- 66-1504.1. Montana state board of pharmacy—power to place drugs under purview of Dangerous Drug Act.
- 66-1505. Salaries and expenses of officers of board.
- 66-1506. Examination of applicants for registration—fees—certificates.
- 66-1508. Store license—certified pharmacy license—suspension or revocation.
- 66-1523. Wrongful labeling.
- 66-1527. Disposition of fees and fines.

66-1504. (3174) Montana state board of pharmacy—powers of board. (a). * * * [Same as parent volume.]

(b) Powers and duties of board of pharmacy. The Montana state board of pharmacy shall have power, and it shall be its duty:

(1) to (7). * * * [Same as parent volume.]

(8) To report as provided in section 2 [82-4002] of this act.

(9) to (11). * * * [Same as parent volume.]

History: En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R. C. M. 1921; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969.

Amendments

The 1969 amendment, in subdivision (b) (8), substituted the reference to the reporting requirements of section 82-4002 for provision requiring annual reports to the governor and the state pharmaceutical association.

66-1504.1. Montana state board of pharmacy—power to place drugs under purview of Dangerous Drug Act. (a) The Montana state board of pharmacy shall have the power to designate by regulation any drug that is not now included under the present Montana Dangerous Drug Act as coming within that act when: (1) the board after investigation finds such drug to have a potential for abuse because of its depressant, stimulant, hallucinogenic or narcotic effect; (2) the appropriate federal drug authorities have promulgated regulations on such drug because of its depressant, stimulant, hallucinogenic or narcotic effect or its potential for abuse. The board may from time to time appoint a committee of experts to advise them with regard to any of the above matters involved in determining whether a regulation should be proposed.

(b) Before any drug shall be designated as a dangerous drug the board shall hold a public hearing. Notice of the hearing specifying the drug concerned shall be published at least once a week for three (3) consecutive weeks in five (5) newspapers of general circulation throughout the state.

(c) The regulations of the board in designating a substance as a dangerous drug coming within the Montana Dangerous Drug Act shall be published in such manner to such extent as the board may deem necessary to adequately notify the public.

History: En. 66-1504.1 by Sec. 12, Ch. 314, L. 1969.

Separability Clause

Section 13 of Ch. 314, Laws 1969 read "If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act."

Repealing Clause

Section 14 of Ch. 314, Laws 1969 read "Sections 27-724, 27-725, 54-101, 54-102, 54-103, 54-104, 54-105, 54-106, 54-107, 54-108, 54-109, 54-110, 54-111, 54-112, 54-113,

54-114, 54-115, 54-116, 54-117, 54-118, 54-119, 54-120, 54-121, 54-122, 54-123, 54-124, 54-125, 54-126, 54-127, 54-128, 94-35-123, 94-35-148, 94-35-199, R. C. M. 1947, and all acts and parts of acts in conflict herewith are hereby repealed."

Effective Date

Section 15 of Ch. 314, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

Cross-References

Dangerous Drug Act, secs. 54-129 to 54-138.

66-1505. (3175) Salaries and expenses of officers of board. Each member of the board shall receive fifteen dollars (\$15) a day for his actual services as such, and his necessary expenses in attending meetings.

The secretary shall receive a salary to be fixed by the board, and all expenses necessarily incurred by him in the performance of his duties.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R. C. M. 1921; amd. Sec. 5, Ch. 175, L. 1939; amd. Sec. 26, Ch. 177, L. 1965; amd. Sec. 1, Ch. 82, L. 1969.

Amendments

The 1965 amendment deleted a final sentence reading, "The secretary shall give bond in such amount as the board

may from time to time require, which bond shall be conditioned for the faithful performance of his duties and shall be approved by the board."

The 1969 amendment substituted "fifteen dollars (\$15)" for "five dollars (\$5.00)."

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

66-1506. (3176) Examination of applicants for registration—fees—certificates. (a) and (b). * * * [Same as parent volume.]

(c) Fees for registration by reciprocity shall be fifty dollars (\$50). Qualifications for examination. * * * [Same as parent volume.]

Reciprocity. * * * [Same as parent volume.]

Pharmacists or assistants not required to be examined or to register anew under this act. * * * [Same as parent volume.]

History: En. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R. C. M. 1921; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969.

Amendments

The 1969 amendment, in subsection (c), substituted "fifty dollars (\$50)" for "twenty-five dollars (\$25.00)."

66-1508. Store license—certified pharmacy license—suspension or revocation. (a). * * * [Same as parent volume.]

(b) The state board of pharmacy shall require and provide for the annual registration and licensing of every pharmacy now or hereafter doing business within this state within the meaning of the act. Upon presentation of evidence satisfactory to the board and upon application upon such form as the board may prescribe and upon the payment of an annual fee of twenty dollars (\$20), the board shall license any pharmacy as a "CERTIFIED PHARMACY," provided, however, that such license shall be granted only to such pharmacies as are operated by registered pharmacists or assistant registered pharmacists qualified as herein prescribed. Such license must be exposed in a conspicuous place in the pharmacy for which it is issued, and shall expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct such pharmacy, to use the word pharmacy to identify his business or to use the word pharmacy in any advertising unless such license has been duly issued and is in full force and effect.

(c). * * * [Same as parent volume.]

History: En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959; amd. Sec. 1, Ch. 9, L. 1967; amd. Sec. 1, Ch. 80, L. 1969.

Amendments

The 1967 amendment inserted "to use the word * * * in any advertising" preceding "unless such license" in the last sentence of subsection (b).

The 1969 amendment substituted "twenty dollars (\$20)" for "five dollars (\$5.00)" in the second sentence of subsection (b).

Sale of Unlabeled Drugs

A pharmacy license may be suspended for a single sale of unlabeled drugs in violation of section 66-1523. *Western Drug of Great Falls v. Gosman*, 141 M 8, 374 P 2d 507, 510.

66-1509. Judicial review of acts of board.**Jurisdiction**

On review of an order of suspension of pharmacy license by the state board of pharmacy the district court has jurisdiction to annul the action of the board if the record before the court indicates that the board acted capriciously or arbitrarily, or without jurisdiction or authority. *Western Drug of Great Falls v. Gosman*, 141 M 8, 374 P 2d 507, 510.

Remand of Cause

On appeal to the district court by druggist from an order of suspension of pharmacy license by the state board of pharmacy, evidence of harshness and excessiveness of penalty was sufficient to require court to remand the cause to the

board with instruction to place such evidence in the record for further consideration as it deemed proper. *Western Drug of Great Falls v. Gosman*, 141 M 8, 374 P 2d 507, 510.

Scope of Review

Additional testimony may not be received by the district court in reviewing an order of the board of pharmacy. *Western Drug of Great Falls v. Gosman*, 141 M 8, 374 P 2d 507, 510.

The word "review" as used in this section means a judicial re-examination as of the proceedings of a lower court by a higher court. *Western Drug of Great Falls v. Gosman*, 141 M 8, 374 P 2d 507, 510.

66-1523. Wrongful labeling. (1) It shall be unlawful for any person who prepares prescriptions, drugs, medicines, chemicals or poisons willfully, negligently or ignorantly to omit to label the package or receptacle, label it falsely, substitute an article different from the one ordered or deviate in any manner from the requirements of an order or prescription.

(2) On prescription drugs, the label shall contain the name and strength of the drug, unless the prescriber otherwise specifies.

History: En. Sec. 12, Ch. 175, L. 1939; amd. Sec. 1, Ch. 49, L. 1969.

Suspension of License

A single sale of unlabeled drugs in violation of this section is ground for suspension of pharmacy license under section 66-1508. *Western Drug of Great Falls v. Gosman*, 141 M 8, 374 P 2d 507, 510.

Amendments

The 1969 amendment numbered the first paragraph as subsection (1) and added subsection (2).

66-1527. (3202.12) Disposition of fees and fines. All fines paid under the provisions of this act and all fees collected by or under the authority of the state board of pharmacy of the state of Montana for registration and licenses issued under this act shall be transmitted to the state board of pharmacy and by it deposited in the state treasury to the credit of the earmarked revenue fund for the use of the state board of pharmacy.

History: En. Sec. 6, Ch. 104, L. 1931; amd. Sec. 16, Ch. 175, L. 1939; amd. Sec. 134, Ch. 147, L. 1963.

Amendment

The 1963 amendment rewrote this section. For section prior to amendment, see parent volume.

CHAPTER 18—PUBLIC ACCOUNTANTS—REGULATION

- Section 66-1813. State board of public accountancy—membership.
 66-1814. Qualifications of board members.
 66-1815. Organization and compensation of board members.
 66-1816. Disposition of funds.
 66-1817. Rule-making powers of the board.
 66-1818. Examining committee.
 66-1819. Certificates of certified public accountants.
 66-1820. Registration of public accountants.
 66-1821. Further requirements for registration of public accountants.

- 66-1822. Education and experience requirements for the years ending December 31, 1971 and prior thereto.
- 66-1823. Education and experience requirements for the years ending after December 31, 1971, and prior to January 1, 1975.
- 66-1824. Education and experience requirements for the years ending after December 31, 1974.
- 66-1825. Applicability of education and experience requirements.
- 66-1826. Powers of board.
- 66-1827. Existing certificates—reciprocity.
- 66-1828. Registration of foreign accountants.
- 66-1829. Partnership composed of certified public accountants—registration thereof.
- 66-1830. Temporary certificate and temporary license.
- 66-1831. Partnerships composed of public accountants—registration thereof.
- 66-1832. Registration of offices.
- 66-1833. Annual licenses to practice.
- 66-1834. Revocation or suspension of certificate, or registration or license.
- 66-1835. Revocation or suspension of partnership registration.
- 66-1836. Hearings before board—notice—procedure—review.
- 66-1837. Reinstatement.
- 66-1838. Acts declared unlawful.
- 66-1839. Exceptions—acts not prohibited.
- 66-1840. Misdemeanors—penalty.
- 66-1841. Privileged communications.
- 66-1842. License fees exclusive.
- 66-1843. Construction.

66-1801 to 66-1807. (3241.1 to 3241.7) Repealed.

Repeal

Sections 66-1801 to 66-1807 (Secs. 1 to 7, Ch. 46, L. 1933; Secs. 1 to 3, Ch. 90, L. 1935; Sec. 1, Ch. 106, L. 1937; Sec. 1,

Ch. 129, L. 1959), relating to regulation of public accountants, were repealed by Sec. 32, Ch. 118, Laws 1969.

66-1809 to 66-1812. (3241.9 to 3241.12) Repealed.

Repeal

Sections 66-1809 to 66-1812 (Secs. 9 to 12, Ch. 46, L. 1933; Sec. 233, Ch. 147, L.

1963), relating to regulation of public accountants, were repealed by Sec. 32, Ch. 118, Laws 1969.

66-1813. State board of public accountancy—membership. There is hereby created a state board of public accountancy, which shall consist of five (5) members. The initial term of one (1) member shall be for a period of two (2) years; the initial term of two (2) members shall be for a period of four (4) years; and the initial term of two (2) members shall be for a period of six (6) years. Upon the expiration of an initial term, the successor shall thereafter be appointed by the governor for a term of six (6) years. The governor shall appoint two (2) public accountants to the board within thirty (30) days after the effective date of this act, one (1) of said public accountants to serve an initial term of four (4) years and the other said public accountant to serve an initial term of six (6) years. The remaining members of the board shall be certified public accountants appointed by the governor within thirty (30) days after the effective date of this act, and the governor within said thirty (30) days shall designate one (1) of said persons to serve an initial term of two (2) years, one (1) of said persons to serve an initial term of four (4) years, and one (1) of said persons to serve an initial term of six (6) years. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of his term

of office, a member shall continue to serve until his successor shall have been appointed and shall have qualified.

History: En. Sec. 1, Ch. 118, L. 1969.

Compiler's Notes

This act became effective July 1, 1969.

Title of Act

An act licensing and regulating the practice of public accounting in the public interest; creating a state board of public

accountancy and prescribing its powers and duties; providing penalties for violations of the provisions of this act; repealing sections 66-1801, 66-1802, 66-1803, 66-1804, 66-1805, 66-1806, 66-1807, 66-1809, 66-1810, 66-1811, and 66-1812, of the Revised Codes of Montana, 1947, as amended, and all other acts and parts of acts in conflict herewith.

66-1814. Qualifications of board members. The board shall consist of three (3) members who are certified under section 7 [66-1819] hereof, and two (2) members who are licensed public accountants under section 8 [66-1820] but do not possess certificates as certified public accountants. All members must be citizens of the United States and residents of this state, and holders of current licenses under section 21 [66-1833]. The certified public accountants on said board appointed by the governor must have been certified and actively engaged in the practice of public accounting for at least five (5) years prior to their appointment. No two (2) such members shall be residents of the same county. The other board members must have been actively engaged in the practice of public accounting for at least five (5) years prior to their appointment. No two (2) such members shall be residents of the same county.

The Montana Society of Certified Public Accountants shall submit to the governor biennially a list of names of two (2) candidates from which the appointments of certified public accountant board members may be made, and the Montana Society of Public Accountants shall submit to the governor biennially a list of names of two (2) candidates from which the appointments of licensed public accountant board members may be made; but the governor, in making appointments, shall not be restricted to the names so submitted. The governor shall remove from the board any member whose license to practice has become void, or has been revoked or suspended, or who ceases to be engaged in the practice of public accounting, and may, after hearing, remove any member of the board for neglect of duty or other just cause. No person who has served two (2) successive complete terms of two (2), four (4) or six (6) years shall be eligible for reappointment until after the lapse of one (1) year. Appointment to fill an unexpired term is not to be considered as a complete term.

History: En. Sec. 2, Ch. 118, L. 1969.

66-1815. Organization and compensation of board members. The board shall elect annually a chairman, a secretary, and a treasurer from its members and all or any two (2) of such officers may sign and approve claims filed against the board of accountancy for payment of all expenses incurred under this act. The board may adopt, and amend from time to time, rules and regulations for the orderly conduct of its affairs and for the administration of this act. A quorum for the transaction of business shall consist of at least three (3) members of the board. The

board shall have a seal which shall be judicially noticed. The board shall keep records of its proceedings and in any proceeding in court, civil or criminal, arising out of or founded upon any provision of this act, copies of said records certified as correct under the seal of the board shall be admissible in evidence as tending to prove the content of said records. The board may employ such personnel and arrange for such assistance as it may require for the performance of its duties. Each member of the board shall receive, as compensation, the sum of twenty dollars (\$20) per diem for each day actually engaged in the duties of his office, and, in addition, shall be reimbursed for his actual and necessary expenses incurred in the discharge of his official duties.

History: En. Sec. 3, Ch. 118, L. 1969.

66-1816. Disposition of funds. All fees and other moneys received by the board pursuant to the provisions of this act shall be deposited with the state treasurer to the account of the earmarked revenue fund for the use of the state board of public accountancy. All existing funds and accumulated balances held for the purpose of administering pre-existing accountancy laws shall be transferred to said earmarked revenue fund.

History: En. Sec. 4, Ch. 118, L. 1969.

66-1817. Rule-making powers of the board. The board may promulgate and amend rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity and competency in the profession of public accountancy. At least sixty (60) days prior to the promulgation of any such rule or amendment, the board shall mail copies of the proposed rule or amendment to each holder of a license issued under section 21 [66-1833] of this act with a notice advising him of the proposed effective date of the rule or amendment and requesting that he submit his comments thereon at least fifteen (15) days prior to such effective date; such comments shall be advisory only. The secretary's certificate of mailing to all licensed accountants shall be conclusive proof thereof.

History: En. Sec. 5, Ch. 118, L. 1969.

66-1818. Examining committee. The members of the board shall constitute the examining committee. This committee shall hold and grade a written examination in accounting and auditing and such related subjects as the examining committee shall determine to be appropriate. The grade determination of the examining committee shall be final in each case. The examining committee shall use the examination and grading services of the American Institute of Certified Accountants. The examination is to be held at least annually and at such other times as applications warrant. The examining committee may determine the time and place of examination and may adopt such rules as are necessary to the orderly conduct of its affairs.

History: En. Sec. 6, Ch. 118, L. 1969.

66-1819. Certificates of certified public accountants. A certificate shall be issued by the board to any person:

(a) Who is (1) a citizen of the United States or who has duly declared his intention of becoming a citizen, (2) is a resident of this state or has a place of business herein or, as an employee, is regularly employed herein, (3) has attained the age of twenty-one (21) years, and (4) is of good moral character;

(b) Who shall have successfully passed the certified public accountants' examination; and

(c) Who meets the requirements of education and experience set forth in sections 10, 11, 12 and 13 [66-1822, 66-1823, 66-1824 and 66-1825] of this act.

History: En. Sec. 7, Ch. 118, L. 1969.

66-1820. Registration of public accountants. Registration as a public accountant shall be available to any person:

(a) Who is (1) a citizen of the United States or who has duly declared his intention of becoming a citizen, (2) is a resident of this state or has a place of business herein or, as an employee, is regularly employed herein, (3) has attained the age of twenty-one (21) years, and (4) is of good moral character;

(b) Who meets the requirements of education and experience set forth in sections 10, 11, 12 and 13 [66-1822, 66-1823, 66-1824 and 66-1825] of this act; and

(c) Who fulfills and complies with the qualifications and requirements set forth in any one of the subdivisions of section 9 [66-1821] of this act.

History: En. Sec. 8, Ch. 118, L. 1969.

66-1821. Further requirements for registration of public accountants.

(a) Persons who held themselves out to the public as public accountants for a minimum of one (1) year prior to July 1, 1969 and who were engaged as principals (as distinguished from employees) within this state on the effective date of this act in the practice of public accounting as their principal occupation may register with the board on or before December 31, 1969, and upon such registration and payment of the license fee, may be licensed by the board as a licensed public accountant. A principal is defined as either the owner of or a partner in an existing accounting practice on the effective date of this act. Initial registration under this subdivision shall not be available after December 31, 1969.

(b) Persons serving in the armed forces of the United States of America on the effective date of this act who immediately prior to entering such service held themselves out to the public as public accountants and who were engaged as principals (as distinguished from employees), within this state, in the practice of public accounting as their principal occupation prior to said service in the armed forces, may register with the board at any time within six (6) months after the date of their separation from active service, and upon such registration and payment of the license fee, be licensed by the board as a licensed public accountant.

(c) Any person who does not qualify under and comply with the provisions of subdivisions (a) or (b) hereof must fulfill the following additional requirements, as a prerequisite to the issuance of a license as a licensed public accountant:

(i) he must pass the written examination in accounting practice, and

(ii) he must also pass the written examination in either accounting theory or auditing, or in lieu of the examination in auditing or theory, he must be the holder of a United States Treasury card which is in good standing at the time of his sitting for the examination in accounting practice. The examinations referred to in this subdivision shall be those prescribed for such subjects under section 6 [66-1818] of this act, and shall be conducted and graded by the same standards as those given to candidates for certified public accountant.

History: En. Sec. 9, Ch. 118, L. 1969.

Compiler's Notes

This act became effective July 1, 1969.

66-1822. Education and experience requirements for the years ending December 31, 1971 and prior thereto. For the years ending December 31, 1971, and prior thereto, education and experience requirements shall be graduation from a high school with a four-year course of study, or an equivalent education, or commercial experience in accounting sufficient, in the judgment of the board, to justify a waiver of such education requirement.

History: En. Sec. 10, Ch. 118, L. 1969.

66-1823. Education and experience requirements for the years ending after December 31, 1971, and prior to January 1, 1975. For the years ending after December 31, 1971, and prior to January 1, 1975, education and experience requirements shall be as follows:

(a) Satisfactory completion of two (2) years of study in a college or university accredited to offer a baccalaureate degree or an equivalent education in the judgment of the board; and

(b) One (1) year of experience in public, private, or governmental accounting of nature and quality satisfactory to the board.

History: En. Sec. 11, Ch. 118, L. 1969.

66-1824. Education and experience requirements for the years ending after December 31, 1974. For the years ending after December 31, 1974, education and experience requirements shall be as follows:

(a) Graduation from a college or university accredited to offer a baccalaureate degree, or an equivalent education in the judgment of the board; and

(b) One (1) year of experience in public, private or governmental accounting of a nature and quality satisfactory to the board.

History: En. Sec. 12, Ch. 118, L. 1969.

66-1825. Applicability of education and experience requirements.

(a) None of the foregoing education and experience requirements shall apply to a candidate for certified public accountant who holds a current

license as a public accountant, or who, on the effective date of this act, was employed as a staff accountant in this state by a practicing public accountant, and is so employed at the time of his examination.

(b) A candidate who is otherwise eligible may take the examination provided for in section 6 [66-1818], before meeting the age and experience requirements herein specified, but the successful completion of such examination shall not qualify him for a certificate or a license as a public accountant until he meets such requirements.

(c) The examining committee may by regulation provide for granting a credit to a candidate for his satisfactory completion of a written examination in any one or more of the subjects of examination given by the licensing authority in any other state, if when he took such examination he was not a resident of this state. Such regulations shall include such requirements as the examining committee shall determine to be appropriate in order that any examination approved as a basis for any such credit shall, in the judgment of the examining committee, be at least as thorough as that included in the most recent examination given by the examining committee at the time of the granting of such credit.

(d) The experience requirements herein set forth need not be continuous or for one (1) employer.

Except as provided in subparagraph (a) above, the applicable education and experience requirements shall be those in effect on the date of the examination by which the candidate successfully completes his examination; but the board may provide by regulation for exceptions to the general rule in order to prevent what it determines to be undue hardship to candidates resulting from changes in the education and experience requirements.

History: En. Sec. 13, Ch. 118, L. 1969.

Compiler's Notes

This act became effective July 1, 1969.

66-1826. Powers of board. The board shall have power to prescribe, by uniform rule, for the following:

(a) The terms and conditions under which a candidate who passes one or more subjects of examination may be re-examined in only the remaining subjects, with credit for the subjects previously passed;

(b) A reasonable waiting period for a candidate's re-examination in a subject he has failed;

(c) The maximum number of re-examinations for which a candidate may apply;

(d) The fees to be charged each candidate for initial examinations and special examinations, not in excess of fifty dollars (\$50) each, and for re-examinations, not in excess of ten dollars (\$10) for each subject in which the candidate is re-examined.

History: En. Sec. 14, Ch. 118, L. 1969.

66-1827. Existing certificates—reciprocity. Persons who, on the effective date of this act, held certified public accountant certificates heretofore issued under the laws of this state shall not be required to obtain

additional certificates under this act, but shall otherwise be subject to all provisions of this act; and such certificates heretofore issued shall, for all purposes, be considered certificates issued under this act and subject to the provisions hereof.

The board, in its discretion, may waive the examination and issue a certificate as a certified public accountant to any person otherwise eligible therefor, who is the holder of a certificate as a certified public accountant, then in full force and effect, issued under the laws of any state, or is the holder of a certificate, license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a certified public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such certified public accountant were substantially equivalent to those in force in the state of Montana at the time the certificate was originally issued.

The board, in its discretion, may waive the examination and register as a public accountant any person otherwise eligible therefor, who is the holder of a license as a public accountant, then in full force and effect, issued under the laws of any state, or is the holder of a license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a licensed public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such licensed public accountant were substantially equivalent to those in force in the state of Montana at the time the license was originally issued.

History: En. Sec. 15, Ch. 118, L. 1969. **Compiler's Notes**

This act became effective July 1, 1969.

66-1828. Registration of foreign accountants. The board may in its discretion permit the registration of any person of good moral character who is the holder of a certificate, license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country. A person so registered shall use only the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license or degree.

History: En. Sec. 15, Ch. 118, L. 1969.

66-1829. Partnership composed of certified public accountants—registration thereof. A partnership engaged in this state in the practice of public accounting may register with the board as a partnership of certified public accountants provided it meets the following requirements:

(a) At least one general partner thereof must be a certified public accountant of this state in good standing, and must hold a license issued under section 21 [66-1833] which is in full force and effect.

(b) Each partner thereof personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant of this state in good standing and must hold a license issued under section 21 [66-1833] which is in full force and effect.

(c) Each partner thereof must be a certified public accountant of some state in good standing.

(d) Each staff member who is employed within this state, and who is certified under section 7 [66-1819] or registered under section 8 [66-1820], must also hold a license issued under section 21 [66-1833] which is in full force and effect.

Application for such registration must be made upon the affidavit of a general partner of such partnership who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is so registered may use the words "certified public accountants" or the abbreviation "CPA's" in connection with its partnership name. Notification shall be given the board within one (1) month after the admission to or withdrawal of a partner from any partnership so registered.

History: En. Sec. 17, Ch. 118, L. 1969.

66-1830. Temporary certificate and temporary license. (a) In the event an applicant for a certificate as a certified public accountant meets all of the requirements for such certificate, other than the residence requirement, the board may, in its discretion, issue to him a temporary certificate as a certified public accountant which shall be effective only until the board shall notify him that his application has been either granted or rejected. In no event shall such temporary certificate be in effect for more than twelve (12) months.

(b) In the event an application for registration as a public accountant meets all of the requirements for such registration, other than the residence requirement, the board may, in its discretion, issue to him a temporary license, as a licensed public accountant, which shall be effective only until the board shall notify him that his application has been either granted or rejected. In no event shall such temporary license be in effect for more than twelve (12) months.

History: En. Sec. 18, Ch. 118, L. 1969.

66-1831. Partnerships composed of public accountants—registration thereof. A partnership engaged in this state in the practice of public accounting may register with the board as a partnership of public accountants provided it meets the following requirements:

(a) At least one (1) general partner thereof must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under section 21 [66-1833] in full force and effect.

(b) Each partner thereof personally engaged within the state in the practice of public accounting as a member thereof must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under section 21 [66-1833] in full force and effect.

(c) Each local manager in charge of an office or a firm in this state must be a certified public accountant or a licensed public accountant

of this state in good standing and a holder of a license issued under section 21 [66-1833] in full force and effect.

(d) Each staff member employed within this state who is certified under section 7 [66-1819] or registered under section 8 [66-1820] must also hold a license issued under section 21 [66-1833] which is in full force and effect.

Application for such registration must be made upon the affidavit of a general partner of such partnership who holds a license to practice in this state as a certified public accountant or as a licensed public accountant. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is so registered may use the words "public accountants" in connection with its partnership name. Notification shall be given the board within one (1) month after the admission to or withdrawal of a partner from any partnership so registered.

History: En. Sec. 19, Ch. 118, L. 1969.

66-1832. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant or a partnership of certified public accountants or by a licensed public accountant or a partnership of licensed public accountants or by one registered under section 16 [66-1828] shall be registered annually under this act with the board, but no fee shall be charged for such registration. The principals of sole proprietorships and all staff employees who are employed within the state and who are holders of certificates as certified public accountants must also hold a license issued under section 21 [66-1833] of this act which is in full force and effect; partnerships must be registered under the provisions of section 17 [66-1829] or section 19 [66-1831], whichever is applicable, and foreign accountants under the provisions of section 16 [66-1828].

History: En. Sec. 20, Ch. 118, L. 1959.

66-1833. Annual licenses to practice. Licenses to engage in the practice of public accounting in this state shall be issued by the board to holders of the certificate of certified public accountant issued under section 7 [66-1819] of this act and to persons registered under section 8 [66-1820] of this act; provided all offices, if any, of such certificate holder or licensed public accountant are maintained and registered as required under section 20 [66-1832] of this act. There shall be an annual license fee in an amount to be determined, from time to time, by the board, not to exceed twenty-five dollars (\$25) for any year or part thereof. All licenses shall expire on the last day of December of each year and may be renewed annually for a period of one (1) year by certificate holders and licensed public accountants in good standing upon payment of an annual renewal fee of not to exceed twenty-five dollars (\$25). Failure of a certificate holder or licensed public accountant to apply for such annual license to practice within (a) three (3) years from the expiration date of the license to practice last obtained or renewed, or (b) three (3) years from the date upon which the certificate holder or li-

censee was granted his certificate or license, shall deprive him of the right to such license, unless the board, in its discretion, determines such failure to have been due to excusable neglect. Any certificate holder or licensed public accountant who is retiring from active practice or other employment because of illness, age, marriage or other justifiable cause, in the opinion of the board, may be placed on an inactive list, without prejudicing his right to be issued a license at a future date. A request for inactive status must be sent to the board within the three-year period as outlined in this section.

History: En. Sec. 21, Ch. 118, L. 1969.

66-1834. Revocation or suspension of certificate, or registration or license. After notice and hearing as provided in section 24 [66-1836] of this act, the board may revoke, or may suspend any certificate issued under section 7 [66-1819] of this act, or any registration granted under section 8 [66-1820] of this act, or may revoke, suspend or refuse to renew any license issued under section 21 [66-1833] of this act, or may censure the holder of any such license, for any one or any combination of the following causes:

(a) Fraud or deceit in obtaining a certificate as certified public accountant, or in obtaining a license to practice public accounting under this act;

(b) Dishonesty, fraud or gross negligence in the practice of public accounting;

(c) Violation of any of the provisions of section 26 [66-1838] of this act;

(d) Violation of a rule of professional conduct promulgated by the board under the authority granted by this act;

(e) Conviction of a felony under the laws of any state or of the United States;

(f) Conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(g) Cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state, for any cause other than failure to pay an annual registration fee in such other state;

(h) Suspension or revocation of the right to practice before any state or federal agency;

(i) Failure of a certificate holder or licensed accountant to obtain an annual license under section 21 [66-1833], within either (a) three (3) years from the expiration date of the license to practice last obtained or renewed by said certificate holder or registrant, or (b) three (3) years from the date upon which the certificate holder or licensed accountant was granted his certificate or registration, unless such failure shall have been excused by the board pursuant to the provisions of section 21 [66-1833].

History: En. Sec. 22, Ch. 118, L. 1969.

66-1835. Revocation or suspension of partnership registration. After notice and hearing as provided in section 24 [66-1836] of this act, the board shall revoke the registration of a partnership if at any time it does not have all the qualifications prescribed by the section of this act under which it qualified for registration.

History: En. Sec. 23, Ch. 118, L. 1969.

66-1836. Hearings before board — notice — procedure — review. (a) Commencement of proceeding. The board may initiate proceedings under this act either on its own motion or on the complaint of any person.

(b) Notice—service and contents. A written notice stating the nature of the charge or charges against the accused and the time and place of the hearing before the board on such charges shall be served on the accused not less than thirty (30) days prior to the date of said hearing, either personally or by mailing a copy thereof [by] registered mail to the address of the accused last known to the board.

(c) Failure to appear. If, after having been served with the notice of hearing as provided for herein, the accused fails to appear at said hearing and defend, the board may proceed to hear evidence against him and may enter such order as shall be justified by the evidence, which order shall be final unless he petitions for a review thereof as provided herein; provided, however, that within thirty (30) days from the date of any order, upon a showing of good cause for failure to appear and defend, the board may reopen said proceedings and may permit the accused to submit evidence in his behalf.

(d) Counsel—witnesses—cross-examination. At any hearing the accused may appear in person and by counsel, produce evidence and witnesses on his own behalf, cross-examine witnesses, and examine such evidence as may be produced against him. The accused shall be entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses on his behalf.

(e) Subpoenas—oaths. The board, or any member thereof, may issue subpoenas to compel the attendance of witnesses and the production of documents, and may administer oaths, take testimony, hear proofs and receive exhibits in evidence in connection with or upon hearing under this act. In case of disobedience to a subpoena the board may invoke the aid of any court of this state in requiring the attending and testimony of witnesses and the production of documentary evidence.

(f) Evidence. The board shall not be bound by technical rules of evidence.

(g) Record. A stenographic record of the hearings shall be kept and a transcript thereof filed with the board.

(h) Attorney for the board. At all hearings the attorney general of this state, or one (1) of his assistants designated by him, or such other legal counsel as may be employed, shall appear and represent the board.

(i) Decision. The decision of the board shall be by majority vote thereof.

(j) Review by court. Anyone adversely affected by any order of the board may obtain a review thereof by filing a written petition for review with the district court of the county in which he has his principal place of business within thirty (30) days after the entry of said order. The petition shall state the grounds upon which the review is asked and shall pray that the order of the board be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the board and thereupon the board shall certify and file in the court a transcript of the record upon which the order complained of was entered. The case shall then be tried; new evidence may be introduced and; briefs may be filed as in an ordinary case at law. The court may affirm, modify or set aside the board's order in whole or in part, or may remand the case to the board for further evidence, and may, in its discretion, stay the effect of the board's order pending its determination of the case. The court's decision shall have the force and effect of a decree in equity.

History: En. Sec. 24, Ch. 118, L. 1969.

66-1837. Reinstatement. Upon application in writing and after hearing pursuant to notice, the board may issue a new certificate to a certified public accountant whose certificate shall have been revoked, or may permit the relicensing of anyone whose license has been revoked, or may reissue or modify the suspension of any license to practice public accounting which has been revoked or suspended.

History: En. Sec. 25, Ch. 118, L. 1969.

66-1838. Acts declared unlawful. (a) No person shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person has received a certificate as a certified public accountant under section 7 [66-1819] of this act, holds a license issued under section 21 [66-1833] of this act which is not revoked or suspended, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under section 20 [66-1832]; provided, however, that a foreign accountant who has registered under the provisions of section 16 [66-1828] of this act, and who holds a current license issued under section 21 [66-1833] of this act, may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license or degree.

(b) No partnership shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such partnership is composed of certified public accountants unless such partnership is registered as a partnership of certified public accountants under section 17 [66-1829] of this act, and all of such partnership's offices in this state for the practice of public

accounting are maintained and registered as required under section 20 [66-1832].

(c) No person shall assume or use the title or designation "licensed public accountant," "public accountant," or any other title, designation, words, letters, abbreviations, sign card or device tending to indicate that such person is a public accountant, unless such person is registered as a licensed public accountant under section 8 [66-1820] of this act, holds a current license issued under section 21 [66-1833] of this act and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under section 20 [66-1832], or unless such person has received a certificate as a certified public accountant under section 7 [66-1819] of this act, holds a current license issued under section 21 [66-1833] of this act and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under section 20 [66-1832].

(d) No partnership shall assume or use the title or designation "licensed public accountants," "public accountant," or any other title, designation words, letters, abbreviation, sign, card, or device tending to indicate that such partnership is composed of public accountants, unless such partnership is registered as a partnership of public accountants under section 19 [66-1831] of this act or as a partnership of certified public accountants under section 17 [66-1829] of this act and all of such partnership's offices in this state for the practice of public accounting are maintained and registered as required under section 20 [66-1832].

(e) No person or partnership shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," or any other title or designation likely to be confused with "certified public accountant," "licensed public accountant," "public accountant," or any of the abbreviations "CA," "EA," "RA," or "LA," or similar abbreviations likely to be confused with "CPA"; provided, however, that anyone who holds a current license issued under section 21 [66-1833] of this act and all of whose offices in the state for the practice of public accounting are maintained and registered as required under section 20 [66-1832] may hold himself out to the public as an "accountant" or "auditor," as provided in subparagraphs (a), (b), (c) and (d); and provided, further, that a foreign accountant registered under section 16 [66-1828] who holds a current license issued under section 21 [66-1833] and all of whose offices in this state for the practice of public accounting are maintained and registered as required under section 20 [66-1832] may use the title under which he is generally known in this country, followed by the name of the country from which he received his certificate, license or degree.

(f) No corporation shall assume or use the title or designation "certified public accountant," "licensed public accountant," or "public accountant," or "accountant"; nor shall any corporation assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," or

any other title or designation likely to be confused with "certified public accountant" or "licensed public accountant," "public accountant," or any of the abbreviations "CPA," "PA," "CA," "EA," "RA," "LA," or similar abbreviations likely to be confused with "CPA."

(g) No person shall sign or affix his name or any trade or assumed name used by him in his profession or business, with any wording indicating that he is an accountant or auditor, or with any wording indicating that he has expert knowledge in accounting or auditing, to any accounting or financial statement, or to any opinion on, report on, or certificate to any accounting or financial statement, unless he holds a current license issued under section 21 [66-1833] of this act, and all of his offices in this state for the practice of public accounting are maintained and registered under section 20 [66-1832]; provided, however, that the provisions of this subsection shall not prohibit any officer, employee, partner or principal or any organization from affixing his signature to any statement or report in reference to the financial affairs of said organization with any wording designating the position, title or office which he holds in said organization, nor shall the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(h) No person shall sign or affix a partnership name with any wording indicating that it is a partnership composed of accountants or auditors or persons having expert knowledge in accounting or auditing, to any accounting or financial statement, or to any report on or certificate to any accounting or financial statement, unless the partnership is registered under this act, and all of its offices in this state for the practice of public accounting are maintained and registered as required under section 20 [66-1832].

(i) No person shall sign or affix a corporate name with any wording indicating that it is a corporation performing services as accountants or auditors or composed of accountants or auditors or persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement.

(j) No person shall assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or in conjunction with the designation "and Company," or "and Co." or a similar designation if, in any such case, there is in fact no bona fide partnership registered under sections 17 or 19 [66-1829 or 66-1831] of this act; provided that a sole proprietor or partnership lawfully using such title or designation in conjunction with such names or designation on the effective date of this act, may continue to do so if he or it otherwise complies with the provisions of this act; and provided, further, that it shall be lawful for a sole proprietor to continue the use of the deceased's name in connection with his business for a reasonable period of time after the death of a former partner.

History: En. Sec. 26, Ch. 118, L. 1969.

Compiler's Notes

This act became effective July 1, 1969.

66-1839. Exceptions—acts not prohibited. Nothing contained in this act shall prohibit any person not a certified public accountant or licensed public accountant from serving as an employee of, or an assistant to, a certified public accountant or a licensed public accountant holding a license to practice under section 21 [66-1833] or partnership composed of certified public accountants or licensed public accountants registered under this act or a foreign accountant registered under section 16 [66-1828] of this act; provided that such employee or assistant shall not issue any accounting or financial statement over his name.

Nothing contained in this act shall prohibit a certified public accountant or a licensed public accountant of another state, or any accountant who holds a certificate, degree or license in a foreign country, constituting a recognized qualification for the practice of public accounting in such country, from temporarily practicing in this state on professional business incident to his regular practice outside this state; provided, that such temporary practice is conducted in conformity with the regulations and rules of professional conduct promulgated by the board.

History: En. Sec. 27, Ch. 118, L. 1969.

66-1840. Misdemeanors—penalty. Any person who violates any provision of section 26 [66-1838] of this act shall be guilty of a misdemeanor.

History: En. Sec. 28, Ch. 118, L. 1969.

66-1841. Privileged communications. Except for permission of the client or person or firm or corporation engaging him or the heirs, successors or personal representatives of such client or person or firm or corporation, and except for the expression of opinions on financial statements, no certified public accountant, licensed public accountant, or employee thereof, shall be required to, nor shall he voluntarily, disclose or divulge information of which he may have become possessed relative to and in connection with any professional services as a public accountant. The information derived from or as a result of such professional services shall be deemed confidential and privileged. Provided, however, that the provisions of this paragraph shall not apply to the testimony of a public accountant given pursuant to subpoena in a court of competent jurisdiction.

History: En. Sec. 29, Ch. 118, L. 1969.

66-1842. License fees exclusive. No license fees shall be imposed as a condition upon the practice of public accountancy, other than those provided for in this act.

History: En. Sec. 30, Ch. 118, L. 1969.

66-1843. Construction. If any provision of this act or the application thereof to anyone or to any circumstances is held invalid, the remainder of the act and the application of such provision to others or other circumstances shall not be affected thereby.

History: En. Sec. 31, Ch. 118, L. 1959.

Repealing Clause

Section 32 of Ch. 118, Laws 1969 read "Repeal Provisions. Sections 66-1801, 66-1802, 66-1803, 66-1804, 66-1805, 66-1806, 66-1807, 66-1809, 66-1810, 66-1811, and 66-1812, Revised Codes of Montana, 1947, and all other acts or parts of acts in con-

flict herewith are hereby repealed; provided, however, that nothing in this act contained shall invalidate or affect any action taken under any law in effect prior to the effective date hereof, nor shall it invalidate or affect any proceeding instituted under such law before the effective date hereof."

CHAPTER 19—REAL ESTATE LICENSE ACT

- Section 66-1924. Title—license required.
 66-1925. Definitions.
 66-1926. Exempted classes.
 66-1927. Real estate commission—members—districts—powers and duties—employees—compensation—disposition of fees.
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 66-1938.1. Hearings—procedure.
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 66-1940. Penalties—legal actions.
 66-1941. Action for compensation.
 66-1943. Real estate meetings and clinics open to all licensees.
 66-1944. Attorney for commission.
 66-1945. Publication of directory.
 66-1946. No repeal of section 94-1822.

66-1901 to 66-1923. (4056 to 4078) Repealed.

Repeal

These sections (Secs. 1 to 23, Ch. 195, L. 1921; Secs. 1, 2, Ch. 40, L. 1925; Sec. 1, Ch. 7, L. 1933; Sec. 1, Ch. 150, L. 1953; Sec. 1, Ch. 129, L. 1957; Sec. 1, Ch. 130,

L. 1957; Sec. 1, Ch. 131, L. 1957; Sec. 1, Ch. 132, L. 1957), relating to real estate brokers, were repealed by Sec. 24, Ch. 250, Laws 1963.

66-1924. Title—license required. This act shall be known and may be cited as the "Real Estate License Act of 1963." From and after the effective date of this act it shall be unlawful for any person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity of a real estate broker or a real estate salesman within this state without first having procured a license as such broker or salesman, or otherwise complied with the provisions of this act.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969.

Title of Act

An act providing for the application,

qualifications, bonding, licensing, supervision and regulation of real estate brokers and real estate salesmen; providing for the collection and disposition of fees; providing for a state real estate commission

and defining its powers and duties; providing reciprocity of licenses, examination and consent to suit by nonresidents; providing grounds for denial, revocation or suspension of licenses; providing hearing procedure; providing for appeals from decisions of the commission and district court; prescribing fees and their disposal; providing penalties for the violation of this act or of any rule or regulation issued by the commission; containing a severability clause; repealing sections 66-1901 through and including 66-1923, Revised Codes of Montana, 1947, as amended by Chapter 129, Laws of 1957, Chapter

130, Laws of 1957, Chapter 131, Laws of 1957, and Chapter 132, Laws of 1957; providing section 94-1822 of the Revised Codes of Montana of 1947 shall not be amended, modified, or repealed by this act; and containing an effective date for this act; and repealing all acts and parts of acts in conflict herewith.

Amendments

The 1969 amendment substituted "or otherwise complied with the provisions of this act" for "as provided in this act" at the end of the section.

66-1925. Definitions. As used in this act, the following terms shall have the following meanings except where the context clearly indicates that another meaning is intended:

(a) The term "real estate" shall include leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere.

(b) The term "broker" shall include any individual who for another, or for a fee, commission or other valuable consideration, or who with the intent or expectation of receiving the same, negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange or lease of any real estate or of the improvements thereon, or collects rents or attempts to collect rents, or advertises or holds himself out as engaged in any of the foregoing activities. The term "broker" also includes any individual employed by or on behalf of the owner or owners, or lessor or lessors of real estate, to conduct the sale, leasing, subleasing or other disposition thereof at a salary or for a fee, commission or any other consideration; it also includes any individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale, lease or other disposition of real estate within this state through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both. Corporations, partnerships and associations shall not be licensed under this act but nothing in this act shall prevent a corporation or partnership from acting as a real estate broker provided that every corporation officer, and every partner, actually negotiating or attempting to negotiate the listing, sale, purchase, rental, exchange or lease of any real estate or of the improvements thereon, or collecting rents or attempting to collect rents, on behalf of said corporation or partnership, shall be licensed as a broker. All officers of any corporation or all members of any partnership, acting as a broker, shall be deemed in violation of this act unless there be full compliance with the provisions of this subsection.

(c) The term "salesman" shall include any individual who, for a salary, commission or compensation of any kind, is employed, either directly, indirectly, regularly or occasionally, by any real estate broker

to sell, purchase or negotiate for the sale, purchase, exchange or renting of any real estate.

(d) The term "person" shall mean and include individuals, partnerships, associations and corporations, foreign and domestic, except that when referring to a person licensed under this act it shall mean an individual.

(e) The term "he" shall mean and include "she" and "it." The term "his" shall mean and include "her" and "its."

History: En. Sec. 2, Ch. 250, L. 1963;
amd. Sec. 2, Ch. 261, L. 1969.

Amendments

The 1969 amendment, in subdivision (b), substituted "individual" for "person" or

organization" and for "person" and added the last two sentences dealing with a corporation or partnership's actions as a real estate broker; in subdivision (c), substituted "individual" for "person"; and in subdivision (d), added the exception.

66-1926. Exempted classes. A single act performed, for a commission or compensation of any kind, in the buying, selling, exchanging, leasing or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. The provisions of this act, however, shall not (1) apply to any person who, as owner or lessor, shall perform any of the aforesaid acts with reference to property owned or leased by himself, or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by such owner or lessor, or (2) apply to any person acting as attorney in fact under the duly executed power of attorney from the owner of any real estate authorizing the final consummation of any contract for the purchase, sale, exchange, renting or leasing of any real estate, or (3) be construed to include in any way the services rendered by any attorney at law in the performance of his duty as such attorney at law, or (4) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter, or (5) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust or will, or an auctioneer, employed by a receiver, trustee in bankruptcy, administrator, executor or trustee, to aid and assist in conducting a public sale held by any such officer, or (6) apply to public officials in the conduct of their official duties, or (7) apply to any person, partnership, association or corporation, foreign and domestic, performing any act with respect to prospecting, leasing, drilling or operating land for hydrocarbons and hard minerals, or disposing of any hydrocarbons, hard minerals or mining rights therein, whether upon a royalty basis or otherwise.

History: En. Sec. 3, Ch. 250, L. 1963.

66-1927. Real estate commission—members—districts—powers and duties—employees—compensation—disposition of fees. (a) There is hereby created the Montana real estate commission, hereinafter referred to as the "commission," to consist of the commissioner of agriculture, who shall act as chairman of the commission, and four members, each

of whom shall be a resident of this state, at least two of whom shall be active and licensed as real estate brokers and who have been actively engaged in the real estate business as a broker in this state for not less than five (5) continuous years prior to the date of appointments. The four members of the commission, other than the chairman, shall be appointed by the governor as follows:

Not more than two members shall be from the same congressional district, with no more than one eligible real estate broker residing in the same congressional district, and not more than three persons on the commission, including the chairman, shall be of the same political party. Upon the initial appointments, the first congressional district's two members shall be appointed for one year and the other for three years, and the second congressional district's members shall be appointed for two years and four years, respectively. Thereafter the term of each member shall be for four (4) years and until their successors are appointed and qualify. In the event of a vacancy on the commission, the governor shall fill the vacancy by appointing a resident from the same district as the member whose office has become vacant, to serve as a member for the unexpired term. If a member takes up residency in a district different from the one in which he resided at the time of appointment, he automatically vacates his commission position. Upon the qualification of the members appointed, the commission shall do all things necessary and proper for carrying out the provisions of this act, and shall from time to time promulgate rules and regulations not inconsistent herewith and make necessary amendments thereto.

(b) The chairman shall cause to be kept a record of all proceedings, transactions, communications and official acts of the commission, be custodian of all the records of the commission and shall cause to be performed such other duties as the commission upon the written request of two or more members of the commission or at such other times as the chairman may in his discretion deem necessary. The commission is authorized to employ such employees as may be necessary to properly carry out the provisions of this act, to fix the salaries of such employees, and to make such other expenditures as are necessary to properly carry out the provisions of this act. The office of the commission shall be maintained in the office of the commissioner of agriculture at the state capitol at Helena, and all files, records and property of the commission shall at all times be and remain therein. Neither the chairman nor any employee of the commission may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

(c) Each member of the commission shall receive as compensation for each one-half day or portion thereof actually spent on his official duties the sum of seven dollars and fifty cents (\$7.50) and his actual and necessary expenses incurred in the performance of any other duties provided for by the commission.

(d) The commission shall adopt a seal of such design as it shall prescribe. Copies of all records and papers in the office of the commission, duly certified by the chairman and authenticated by the seal of the commission, shall be received in evidence in all courts with like

effect as the original. All records of the commission shall be open to public inspection under such reasonable rules and regulations as it shall prescribe.

(e) All fees collected under the provisions of this act shall be deposited at least monthly with the state treasurer and said funds so deposited shall be apportioned as follows:

Five per cent (5%) from each examination fee and twelve and one-half per cent (12½%) from all other fees collected shall be deposited to the credit of the general fund of the state to reimburse the state for its costs in administering this act.

The balance of said fees collected by the commission shall be deposited to the credit of the earmarked revenue fund and are hereby appropriated for the purposes of carrying out the provisions of this act. All expenditures from said funds by the commission under the provisions of this act shall be certified and approved by the chairman of the commission and paid by the appropriate state officials. Payment shall be made upon warrants appropriately drawn out of the proper funds. The commission shall provide a system of accounting which shall show the amount of money received therefor, and also an itemized statement of the expenses in connection therewith.

The commission shall have the power to make orders concerning the disbursement of the moneys in said earmarked revenue fund, including the payment of compensation and expenses of its members, clerks, employees, and board members.

(f) The commission shall have the power and authority to promulgate rules and regulations governing and regulating its internal operation and business meetings. The commission shall also have the power and authority to promulgate rules and regulations relating to the administration of this act but not inconsistent therewith.

History: En. Sec. 4, Ch. 250, L. 1963.

66-1928. Disposition of excess over \$7,500.00. All moneys, investments and credits in excess of seven thousand five hundred dollars (\$7,500.00) remaining in the state treasury to the credit of the commission in the earmarked revenue fund at the close of the license year on December 31st of each year, after the payment of all expenses for that year, shall on or before the fifteenth day of the succeeding month be determined by the commission and shall be transferred from the earmarked revenue fund to the general fund to become available for general governmental purposes.

History: En. Sec. 5, Ch. 250, L. 1963.

66-1929. Licenses—applicants for licenses. (a) Licenses shall be granted only to individuals who are deemed by the commission to be of good repute and competent to transact the business of a broker or salesman in such manner as to safeguard the interests of the public.

(b) Each applicant for a broker's license shall be a citizen of the United States; shall be at least twenty-one (21) years of age; shall have graduated from an accredited high school or shall have completed an equivalent education as determined by the commission; shall have been

actively engaged as a licensed real estate salesman for a period of two (2) years or shall have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during such two (2) year period as determined by the commission, except that if the commission shall find that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the commission may waive this experience requirement; and must file an application for license with the commission. The commission shall require such information as it may deem necessary from every applicant to determine his honesty, trustworthiness and competency.

(c) Each applicant for a salesman's license shall be at least twenty-one (21) years of age; shall have received credit for completion of two (2) years of full curriculum study at an accredited high school or shall have completed an equivalent education as determined by the commission; and must file an application for license with the commission. His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect. The commission shall issue to each licensed broker and to each licensed salesman a license and a pocket card in such form and size as the commission shall prescribe.

History: En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969.

Amendments

The 1969 amendment, in subsection (a), substituted "individuals" for "persons"; in subsection (b), inserted "shall have graduated * * * waive this experience requirement" in the first sentence and de-

leted a former last sentence which read, "Every officer of a corporation acting as a broker and every member of an association or partnership acting as a broker shall obtain a broker's license"; and, in subsection (c), inserted "shall have received credit * * * determined by the commission" in the first sentence.

66-1930. Written examination—contents—time and place—exemptions. (a) In addition to proof of honesty, trustworthiness and good reputation, each applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the commission. The examination shall be given at least once each six months and at such places within the state as the commission shall prescribe. The examination for a salesman's license shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage and the provisions of this act. The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license. An applicant who has failed twice in succession to pass the same class of examination shall be ineligible for a further examination until six months have passed; provided, however, that any resident of the state of Montana who was at the effective date of this act actively engaged in the real estate business as a licensed broker in this state may, upon complying with the other requirements for a broker's li-

cense, obtain a broker's license without examination if application therefor is made within ninety (90) days after the effective date of this act; and provided further that any person who has acted as a licensed salesman upon complying with the other requirements for a salesman's license may obtain a salesman's license without an examination if application is made within ninety (90) days after the effective date of this act.

History: En. Sec. 7, Ch. 250, L. 1963.

66-1931. License—issuance—suspension—revocation. The commission shall have the full power to regulate the issuance of licenses and to revoke or suspend licenses issued under the provisions of this act.

History: En. Sec. 8, Ch. 250, L. 1963.

66-1932. License—delivery—display—pocket card. The commission shall prescribe the form of license. Each license shall have placed thereon the seal of the commission. The license of each real estate salesman shall be delivered or mailed to the real estate broker by whom the real estate salesman is employed, and shall be kept in the custody and control of such broker. It shall be the duty of each broker to display his own license conspicuously in his place of business. The commission shall annually prepare and deliver a pocket card certifying that the person whose name appears thereon is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and including, on real estate salesman's cards only, the name and address of the broker employing such real estate salesman.

History: En. Sec. 9, Ch. 250, L. 1963.

66-1933. Bond of brokers and salesmen. No license shall be issued or renewed until the applicant for a broker's license or salesman's license has filed a bond with the commission in the sum of ten thousand dollars (\$10,000.00), executed by a surety company duly authorized to do business in the state of Montana in a form approved by the commission and conditioned that the applicant, if and when licensed, shall conduct his business and himself in accordance with the provisions of this act, and further conditioned that the applicant, if and when licensed, shall pay, to the extent of ten thousand dollars (\$10,000.00), all judgments recovered against him for loss or damage to any person arising in the course of the applicant's practice as a real estate broker or salesman. All bonds given by licensees under the provisions of this act, after approval, shall be filed and held in the office of the commission. If for any reason the bond of any broker or salesman shall become canceled or void, the license of such broker or salesman shall be automatically suspended until such broker or salesman shall be again fully bonded as herein provided and said bond has been approved by the commission. If such suspension is not terminated by rebonding and approval within thirty (30) days from the date of suspension, the license of such broker or salesman shall be automatically revoked.

History: En. Sec. 10, Ch. 250, L. 1963; amd. Sec. 4, Ch. 261, L. 1969.

Amendments

The 1969 amendment deleted "running to the state of Montana and" before "executed by a surety company," deleted "The bond shall be" from the beginning of the

former second sentence, combined the former first and second sentences into the present first sentence, inserted "if and when licensed" before "shall conduct his business," added "and further conditioned * * * broker or salesmen"; and added the last two sentences.

66-1934. Fees—when due. To pay the expense of the maintenance and operation of the office of the commission and the enforcement of this act, a fee not to exceed the amount indicated below shall be charged by the commission and paid into the earmarked revenue fund for each of the following:

- (a) For each examination, a fee not to exceed fifty dollars (\$50.00).
- (b) For each original resident broker's license issued, a fee not to exceed fifty dollars (\$50.00).
- (c) For each annual renewal of a resident broker's license, a fee not to exceed fifty dollars (\$50.00).
- (d) For each original nonresident broker's license issued, a fee not to exceed fifty dollars (\$50.00).
- (e) For each annual renewal of a nonresident broker's license, a fee not to exceed fifty dollars (\$50.00).
- (f) For each original salesman's license issued, a fee not to exceed twenty-five dollars (\$25.00).
- (g) For each annual renewal of a salesman's license, a fee not to exceed twenty-five dollars (\$25.00).
- (h) For each additional office or place of business, an annual fee not to exceed twenty-five dollars (\$25.00).
- (i) For each change of place of business or change of employer or contractual associate, a fee not to exceed twenty-five dollars (\$25.00).
- (j) For each duplicate license, where the original license is lost or destroyed and affidavit is made thereof, a fee not to exceed ten dollars (\$10.00).
- (k) For each duplicate pocket card, where the original pocket card is lost or destroyed and affidavit is made thereof, a fee not to exceed ten dollars (\$10.00).

The commission shall at its first meeting prepare a schedule of fees within the limits set by this section. The commission may from time to time revise such schedule of fees within the limits herein provided; provided, however, a fee once set for any one of the items herein for which a fee is charged cannot be increased or decreased until at least one year has passed since the fee for that particular item was last increased or decreased.

All annual fees shall be due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before

January 1 will automatically cancel such license, but otherwise said license will remain in full force and effect continuously from the date of issuance, unless suspended or revoked by said commission for just cause.

History: En. Sec. 11, Ch. 250, L. 1963.

66-1935. Requirements for office—employment of salesmen—issuance and display of license. (a) Each resident licensed broker shall maintain a fixed office within this state. The original license of the broker and the original license of each salesman in the employ of or under contract with such broker shall be prominently displayed in the office. The address of the office and any branch office shall be designated on the broker's license. In case of removal from the designated address, the licensee shall notify the commission before such removal or within ten days thereafter, designating the new location of this office, and paying the required fee, whereupon a license for the new location for the unexpired period shall issue.

(b) A salesman shall not be employed by or under contract to more than one licensed broker nor shall he perform services for any broker other than the one designated upon the license issued to the salesman. Whenever a licensed salesman desires to change his employment or contractual relationship from one licensed broker to another, he shall notify the commission promptly in writing of the facts attendant thereon, pay the required fee, and return his license and pocket card, and a new license and pocket card shall thereupon be issued. No salesman shall directly or indirectly work for or with a broker until he has been issued a license to work for or with that broker. Upon termination of a salesman's employment or contractual relationship he shall surrender his license and pocket card to his broker, who shall return them to the commission for cancellation.

(c) Only one license shall be issued to any salesman to be in effect at one time.

History: En. Sec. 12, Ch. 250, L. 1963.

66-1936. Transactions with nonresidents and with nonlicensed brokers or salesmen—consent to legal process. (a) It is unlawful for any licensed broker to employ or compensate directly or indirectly any person for performing any of the acts regulated by this act who is not a licensed broker or licensed salesman; provided, however, that a licensed broker may pay a commission to a licensed broker of another state so long as such nonresident broker has not conducted and does not conduct in this state any service for which a fee, compensation or commission is paid; provided, further, this subsection shall not limit the provisions of the subsection following.

(b) A nonresident of this state, who is actively engaged in the real estate business, who maintains a place of business in another state and who has been duly licensed in such other state to conduct such business in that state, may obtain a license as a broker in this state by complying with all provisions of this act; provided, however, that this section shall

apply only to those brokers of other states which offer the same privileges to the licensed brokers of this state. Such nonresident licensee need not maintain a place of business within this state. The commission may license such nonresident broker without examination, provided that he files with the said commission a duly authorized or certified copy of the license issued to such nonresident for the conducting of such business in any other state, and by paying to the said commission the same license fee as is herein provided for the obtaining of a broker's license in this state. The commission may in its discretion refuse to issue a broker's license to an applicant who is not a resident of this state.

(c) Every nonresident broker shall file an irrevocable written consent that legal actions arising out of any commenced or completed transaction may be commenced against such nonresident broker in any county of this state which may be appropriate and designated by section 93-2904; and such consent shall provide that service of summons in any such action may be served upon the chairman of the commission, for and on behalf of said nonresident broker, and such service shall be held to be sufficient to give the court jurisdiction over such nonresident broker and his salesman or agent conducting any such transaction in any county. The consent shall be duly acknowledged, and if made by a corporation, shall be authenticated by its seal. Any service of process or pleading made upon the commission shall be by duplicate copies, one of which shall be filed in the office of the commission and the other forwarded by registered mail to the last known principal address of the nonresident broker against whom said process or pleading is directed. In any action in which service of process or pleading is made upon the commission no default shall be taken except upon certification of the chairman of the commission that a copy of said process or pleading was mailed to the defendant as herein provided. In actions in which service of process or pleading is made upon the commission, defaults may be entered and default judgments taken in the manner provided as in the case where publication of summons is had; provided the method of service of process or pleadings provided for by this section shall in no way limit section 93-2702, Revised Codes of Montana, 1947. (Rule 4, M.R. Civ. P.)

History: En. Sec. 13, Ch. 250, L. 1963.

66-1937. Grounds for refusal—suspension or revocation of license. The commission may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any real estate broker or any real estate salesman and shall have the power to revoke or suspend any license issued under this act whenever the broker or salesman has been found guilty by a majority of the commission of any of the following practices:

(1) Intentionally misleading, untruthful or inaccurate advertising, whether printed or by radio, display or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies or services of the business conducted;

(2) Making any false promises of a character likely to influence, persuade or induce;

(3) Pursuing a continued and flagrant course of misrepresentation, or making false promises through agents or salesmen, or any medium of advertising, or otherwise;

(4) Use of the term "realtor" by a person not authorized to do so, or using any other trade name or insignia of membership in any real estate organization of which the licensee is not a member;

(5) Failing to account for or to remit any money coming into his possession belonging to others;

(6) Accepting, giving or charging any undisclosed commission, rebate or profit on expenditures made for a principal;

(7) Acting in a dual capacity of broker and undisclosed principal in any transaction;

(8) Guaranteeing or authorizing or permitting any person to guarantee future profits which may result from the resale of real property;

(9) Offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on any terms other than those authorized by the owner or his authorized agent;

(10) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal;

(11) Accepting employment or compensation for appraising real property contingent upon the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) Negotiating a sale, exchange or lease of real property directly with an owner or lessee if he knows that such owner has a written outstanding contract in connection with such property, granting an exclusive agency to another broker;

(13) Soliciting, selling or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge or consent of the employer;

(15) Failing voluntarily to furnish a copy of any written instrument to any party executing the same at the time of its execution;

(16) Paying a commission in connection with any real estate sale or transaction to any person who is not licensed as a real estate broker or real estate salesman under this act;

(17) Intentionally violating any reasonable rule or regulation promulgated by the commission in the interests of the public and in conformance with the provisions of this act;

(18) Failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, any deposit money or other money entrusted to him as salesman by any person;

(19) Demonstrating his unworthiness or incompetency to act as a broker or salesman.

(20) Conviction of a felony.

History: En. Sec. 14, Ch. 250, L. 1963; amd. Sec. 5, Ch. 261, L. 1969.

Amendments

The 1969 amendment, in subdivision (12), substituted "lessee" for "lessor"; rewrote subdivision (16), which formerly read, "Paying a commission or compensation to any person for performing the services of a real estate broker or real estate salesman who has not first secured his license under this act"; and, in subdivision (18), inserted "as salesman" before "by any person" and deleted "as a representative of his registered broker" at the end.

Civil Liability Resulting from Violation

Vendor was entitled to cancellation of contract for sale of land as well as damages from real estate broker for misrepresentations relating to marketability of title made by broker during course of dealings with vendor in violation of subdivisions (2) and (3) of statute; vendee was entitled to damages from broker for misrepresentations and failure to remit vendee's earnest money to vendor in violation of subdivisions (2), (3) and (5) of statute. *Stafford v. Love*, 151 M 270, 442 P 2d 190.

66-1938. Repealed.

Repeal

Section 66-1938 (Sec. 15, Ch. 250, L. 1963), relating to the procedure for hold-

ing a hearing prior to refusal of a real estate broker's or salesman's license, was repealed by Sec. 9, Ch. 261, Laws 1969.

66-1938.1. Hearings—procedure. (a) Notice of hearing upon complaint. When the commission shall have investigated an application for a real estate broker's or salesman's license or investigated the actions of a real estate broker or salesman upon the sworn complaint in writing of any person, or upon its own motion, and such investigation shall have revealed reasonable grounds for denying such application, or reasonable indication of a violation of any of the provisions of this act as cause for revoking or suspending a license issued to any real estate broker or salesman, the commission shall, before denying the application or revoking or suspending the license, set the matter for hearing and give twenty (20) days' notice of hearing the same, in writing, to the applicant or licensee, by registered mail, return receipt requested, addressed to the last known address of such applicant or licensee, and if such licensee is a real estate salesman, or such applicant seeks a salesman's license, such notice shall also be sent to the broker employing him or in whose employ he seeks to enter, at such broker's last known business address by registered mail, return receipt requested. If a written complaint or charges have been filed with the commission or prepared by it, a copy thereof shall be attached to and sent with each of the notices. The notice shall be substantially in the following form:

BEFORE THE MONTANA REAL ESTATE COMMISSION

In the Matter of the (Application of John Doe for a Real Estate Broker's License) or (Charge Against John Doe, a Licensed Real Estate Broker, for Violation of the Real Estate License Act of 1963).

NOTICE OF HEARING

THE STATE OF MONTANA SENDS GREETING TO:

(1) YOU ARE HEREBY NOTIFIED that the Montana Real Estate Commission has investigated your application for a real estate broker's (salesman's) license and such investigation has revealed reasonable cause to set said matter for hearing at ----- o'clock ----M., on -----, 19----, at -----, Montana.

(or)

(2) YOU ARE HEREBY NOTIFIED that the Montana Real Estate Commission has received a sworn complaint concerning your action as a real estate broker (or salesman), (hereto attached) alleging as follows (or has charged you with the following violation):

That this commission has investigated said complaint (or has of its own motion investigated your action as a real estate broker-salesman) and found reasonable cause to set said matter for hearing at ----- o'clock ----M., on -----, 19----, at ----- Montana. You shall respond to the charges above (or hereto attached) by filing your written answer to the charges with the commission in triplicate within fourteen (14) days from the date of mailing of this notice.

(and)

You shall appear at the time and place above mentioned, and produce what evidence and witnesses you may have. If you fail to appear at the hearing, and good cause for continuance is not shown, the commission will render its decision upon the evidence presented to it.

Dated at Helena, Montana, this ----- day of -----, 19----.

MONTANA REAL ESTATE COMMISSION

Chairman

The licensee or applicant shall file an answer to the charges within fourteen (14) days after notice has been mailed by the commission. Upon receipt of the written answer of the person charged, the chairman of the commission will send a copy of said answer to the person or persons presenting the sworn complaint, if any, and one copy to each member of the commission.

(b) Commission hearing and decision—appeal. The hearing may be held in the offices of the commission in Helena, Montana, or elsewhere, as the commission shall order. All hearings shall be open to the public and conducted informally in so far as an orderly presentation will permit. Any interested party shall have the right to be heard in person or by counsel, and any interested party or a member of the commission may examine or cross-examine any witness at the discretion of the chair-

man. The chairman may administer oaths, examine the witnesses and take any evidence he deems pertinent to the determination of the charges. The commission shall consider only that evidence presented or introduced at the hearing, but shall not be bound by any laws of evidence of this state. All witnesses must be sworn before testifying. A full and complete record shall be kept of all proceedings and all testimony shall be recorded, but need not be transcribed unless the matter be appealed. Four (4) members of the commission shall constitute a quorum, one of whom must be the chairman. No member shall sit as a member of the commission to hear any matter in which he has an interest, nor shall he represent any interested party or witness at a hearing. Any interested party may challenge any member of the commission in writing, served upon the chairman, five (5) days in advance of the scheduled time of any hearing stating the reasons therefor, and if the commission shall find merit in the challenge, it shall disqualify the challenged member. A decision of a majority of the commission members sitting shall constitute the decision of the commission on any issue presented for its decision. The commission shall have continuing jurisdiction over all matters heard by it, to examine additional evidence or to hear additional testimony, and to revise, modify, alter, amend or reverse all orders, findings and determinations made by it at any time and shall not lose jurisdiction unless and until jurisdiction has been taken by a court of competent jurisdiction in a proceeding filed therein as provided by section 66-1939. The commission may postpone or continue a hearing from time to time as it deems necessary. As soon as possible after the hearing, the commission shall render its decision and order in writing, stating its findings and conclusions signed by all commission members joining in the decision. If an interested party fails to appear at the hearing after due notice, and good cause for continuance is not shown, the commission shall render its decision upon the evidence presented to it. Copies of such decision shall be served upon all interested parties by registered mail, return receipt requested, and shall be kept on file in the office of the commission in Helena, Montana, open to public inspection. Any witness subpoenaed shall be entitled to the same fees and mileage as is prescribed by law in judicial proceedings in the district courts of this state in civil actions, but the payment of such fees and mileage must be paid out of and kept within the limits of the funds created. Depositions may also be taken and used as in civil cases in the district courts. In the absence of an appeal, the decision of the commission shall become final and take effect thirty (30) days after service of the decision upon all interested parties appearing. If an appeal is taken to a district court or to the supreme court, and the decision of the commission is reversed or in any way modified, the commission will amend its decision to conform to the ruling of the court no later than the date upon which the right to appeal or petition for rehearing by the court shall expire.

(c) Subpoena—enforcement by warrant of arrest. Upon written application from any interested party to a hearing or upon the request of any member of the commission, or at his own discretion, the chairman

may issue a subpoena requiring the attendance and testimony of any witness present in the state of Montana, and he may further demand of such a witness that he produce any papers, books, records or documents within the power of such witness to obtain, the subpoena to be substantially in the following form :

BEFORE THE MONTANA REAL ESTATE COMMISSION

In the Matter of the (Application of John Doe for a Real Estate Broker's License) or (Charge Against John Doe, a Licensed Real Estate Broker, for Violation of the Real Estate License Act of 1963).	}	SUBPOENA (DUCES TECUM)
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THE STATE OF MONTANA SENDS GREETING TO:

Pursuant to the Real Estate License Act of 1963, as amended,
WE COMMAND YOU, that all and singular, business and excuses
being set aside, you appear and attend before the Montana Real Estate
Commission at (its offices in the State Capitol Building, in Helena, Mon-
tana) (at _____, Montana), at _____
o'clock __M., on the _____ day of _____, 19____, then and there
to testify as a witness in the above-entitled matter, (and that you bring
with you and there produce the following papers, books, records or docu-
ments now in your custody or under your control, namely:_____

-----)

GIVEN at Helena, Montana, this day of _____, 19_____.

MONTANA REAL ESTATE COMMISSION

Chairman

All subpoenas issued shall be served as provided in Rule 45(c), Mon-
tana Rules of Civil Procedure. If a witness shall fail or refuse to attend
a hearing, or fail to produce the papers, books, records, or other docu-
ments demanded of him, in accordance with any subpoena so issued and
served, the chairman, upon proof of service of the subpoena, may issue a
warrant to the sheriff of the county where the witness may be, to arrest the
witness and bring him before the commission where his attendance is
required, together with any papers, books, records or documents demand-
ed in such subpoena. Such warrant shall be substantially in the follow-
ing form :

BEFORE THE MONTANA REAL ESTATE COMMISSION

In the Matter of the (Application of
John Doe for a Real Estate Broker's
License) or (Charge Against John Doe,
a Licensed Real Estate Broker, for
Violation of the Real Estate License
Act of 1963).

WARRANT OF
ARREST

THE STATE OF MONTANA, TO ANY SHERIFF, CONSTABLE,
MARSHAL, HIGHWAY PATROL OFFICER OR POLICE OFFICER
IN THIS STATE:

Subpoena having been issued by the chairman of the Montana Real Estate Commission pursuant to the Real Estate License Act of 1963, as amended, commanding the attendance of the above-named _____ to appear before said commission at (its offices in the Capitol Building in Helena, Montana) at _____ o'clock ____M., on the _____ day of _____, 19____, (and that he bring with him certain named papers, books, records or documents) and that the above-named _____ having failed and refused to appear at the said time and place (or failed to produce the papers, books, records and documents demanded).

YOU ARE THEREFORE COMMANDED FORTHWITH to arrest the above-named _____ and bring him before me at (the offices of the Montana Real Estate Commission in the State Capitol Building in Helena, Montana) (together with the papers, books, records and documents demanded), at _____ o'clock ____M., on the _____ day of _____, 19____.

Dated at Helena, Montana, this ____ day of _____, 19____.

MONTANA REAL ESTATE COMMISSION

Chairman

Where, in any proceeding before the commission, any witness shall fail or refuse to testify, the giving of his testimony may be enforced in the same manner as courts of competent jurisdiction enforce testimony of witnesses in civil cases in the courts of this state.

(d) Definitions. As used in this section, the term "interested party" means:

(1) The party or parties charged with any violation of this act or an applicant for issuance of a real estate broker's or salesman's license, as the case may be.

(2) All partners or business associates of the party or parties charged, or of the applicant, as the case may be, and all officers, directors and stockholders of any corporation through or for which the party or parties charged sell real estate as defined in this act.

(3) If the party charged is a broker, then any salesman employed by him; if a salesman, then the broker employing him.

History: En. Sec. 8, Ch. 261, L. 1969.

Title of Act

An act amending sections 66-1924, 66-1925, 66-1929, 66-1933, 66-1937, 66-1940, and 66-1941, R. C. M., 1947, which sections are a part of the Real Estate License Act of 1963, by redefining the words "broker" and "salesman," by establishing additional standards for licensing brokers and salesmen, by amending bonding requirements for brokers and salesmen, and by providing a penalty for acting as a broker or salesman when license is suspended or revoked; establishing revised hearing procedures; and repealing sections 66-1938 and 66-1942, R. C. M., 1947.

Repealing Clause

Section 9 of Ch. 261, Laws 1969 read

"Sections 66-1938 and 66-1942, R. C. M., 1947, are hereby repealed."

Separability Clause

Section 10 of Ch. 261, Laws 1969 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair, or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

Repealing Clause

Section 11 of Ch. 261, Laws 1969 repealed all acts and parts of acts in conflict therewith.

66-1939. Appeal to court—supersedeas—bond. (a) Any person aggrieved shall have the right of appeal from any adverse ruling, order or decision of the commission to the district court of the county in which he resides or maintains his business, or in the county where the hearing was held, within thirty (30) days from the service of notice of the action of the commission upon the parties thereto.

(b) Notice of appeal shall be filed in the office of the clerk of the court, which shall issue a writ of certiorari directed to the commission, commanding it, within ten (10) days after service thereof, to certify and file with the court a certified copy of the records of the case in which the appeal has been taken, including all documents and papers and a transcript of all testimony taken in the matter, together with the commission's findings, conclusions, and orders therein. The appeal shall be heard in due course without a jury by the court, which shall review the record, and after hearing thereon, make its determination of the cause.

(c) Any person taking an appeal to the district court shall post a bond in the amount of three hundred dollars (\$300.00) for the payment of any costs which may be taxed against him.

(d) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the commission, the court may order that the additional evidence be taken before the commission upon conditions determined by the court. The commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings or decisions with the reviewing court.

(e) An appeal may be taken to the supreme court from a district court by the commission or by any person aggrieved from an adverse ruling, order or decision of the district court. Such appeal shall be taken within sixty (60) days after the order is made and entered in the minutes of the court filed with the clerk. The method and procedure of taking an appeal, together with the amount of the undertaking or deposit on

appeal, shall be governed by Chapter 80 of Title 93, Revised Codes of Montana, 1947.

(f) Any order, rule or decision of the commission shall not take effect until after the time for appeal has expired. In the event an appeal is taken by a licensee or applicant, the appeal shall not act as a supersedeas unless the court so directs, and the court shall dispose of the appeal and enter its decision promptly.

History: En. Sec. 16, Ch. 250, L. 1963.

66-1940. Penalties—legal actions. (a) Any individual acting as a broker or salesman without a license or while his license is suspended or revoked, or any person who violates any provision of this act, shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) or by imprisonment for a term not to exceed ninety (90) days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000.00) or by imprisonment for a term not to exceed six (6) months, or both.

(b) In case any person in a civil action is found guilty of having received any money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this act, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

(c) Any person sustaining damages by failure of a real estate broker or real estate salesman to comply with the provisions of this act, shall have the right to commence an action in his own name against the real estate broker and his surety, or the real estate salesman and his surety, or both the broker and any salesman employed directly or indirectly by such broker and their respective sureties, for the recovery of any damages sustained as the result of any act specified in section 66-1937 herein or as a result of the failure of the real estate broker or real estate salesman to comply with the provisions of this act. In all cases where suit is brought against the broker or the salesman, and his surety, the court shall, upon entering judgment for the plaintiff, allow as a part of the costs of suit a reasonable amount as attorney's fees.

All penalties provided for by this section may be collected from the broker's and salesman's bonds provided by section 66-1933.

History: En. Sec. 17, Ch. 250, L. 1963; amd. Sec. 6, Ch. 261, L. 1969.

Amendments

The 1969 amendment, in subsection (a), substituted "individual" for "person," deleted "first obtaining" before "a license" and inserted "or while his license * * * provision of this act" before "shall be

guilty" in the first sentence; in subsection (c), substituted "section 66-1937" for "section 14 [66-1937]"; and in the concluding paragraph, substituted "section 66-1933" for "section 10 [66-1933]."

Civil Liability Resulting from Violation

Where vendor sued vendee, broker and broker's surety for cancellation of contract

for sale of land and for damages and where vendee filed cross-complaint against broker and broker's surety, vendor was entitled to cancellation of contract and both vendor and vendee were entitled to

reasonable attorney's fees and equal share in treble damage award based on vendee's right to recover his earnest money from broker and broker's surety. *Stafford v. Love*, 151 M 270, 442 P 2d 190.

66-1941. Action for compensation. Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesman within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesman or authorized to act as a broker under the provisions of this act at the time the alleged cause of action or claim arose.

History: En. Sec. 18, Ch. 250, L. 1963; amd. Sec. 7, Ch. 261, L. 1969.

Amendments

The 1969 amendment inserted "or authorized * * * of this act" after "real estate salesman" near the end of the section.

66-1942. Repealed.

Repeal

Section 66-1942 (Sec. 19, Ch. 250, L. 1963), relating to the licensing of mem-

bers and employees of a real estate company, was repealed by Sec. 9, Ch. 261, Laws 1969.

66-1943. Real estate meetings and clinics open to all licensees. (a) The commission is authorized to conduct, hold or assist in conducting or holding real estate clinics, meetings, courses or institutes and to incur the necessary expenses in connection therewith.

(b) The commission is authorized to assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

History: En. Sec. 20, Ch. 250, L. 1963.

66-1944. Attorney for commission. The attorney general of the state shall render to the commission opinions on all questions of law relating to the interpretation of this act or arising in the administration thereof. The attorney general shall further act as attorney for the said commission in all actions and proceedings brought by or against it under or pursuant to any of the provisions of this act; provided, all fees and expenses of the attorney general acting in such capacity shall be paid out of commission moneys in the earmarked revenue fund.

History: En. Sec. 21, Ch. 250, L. 1963.

66-1945. Publication of directory. The commission shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data as the commission may determine to be in the interest of real estate licensees and the public.

History: En. Sec. 22, Ch. 250, L. 1963.

66-1946. No repeal of section 94-1822. Nothing contained herein shall be construed to amend, modify or repeal section 94-1822 of the Revised Codes of Montana of 1947. This act shall be construed to be supplemental to said section 94-1822.

History: En. Sec. 25, Ch. 250, L. 1963.

Separability Clause

Section 23 of Ch. 250, Laws 1963 read "Unconstitutionality—severability. If any provision of this act is held invalid, that provision shall be deemed to be excised from this act and the invalidity thereof shall not affect any of the other provisions of this act. If the application of any provision of this act to any person or circumstance is held invalid, it shall not affect the application of such provision to such persons or circumstances other than those to which it is held invalid."

Repealing Clauses

Section 24 of Ch. 250, Laws 1963 read

"Repealing clause. This act expressly repeals sections 66-1901 through and including 66-1923, Revised Codes of Montana, 1947, as amended by Chapter 129, Laws of 1957, Chapter 130, Laws of 1957, Chapter 131, Laws of 1957 and Chapter 132, Laws of 1957."

Section 27 of Ch. 250, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 26 of Ch. 250, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

CHAPTER 21—TITLE ABSTRACTERS—REGULATION

Section 66-2104. Compensation of members of board—disposition of funds.

66-2104. (4139.4) Compensation of members of board—disposition of funds. Each member of the board shall receive a compensation of five dollars (\$5.00) per day for actual services while attending meetings or otherwise engaged upon business connected with the board, and shall receive ten cents (\$0.10) per mile for each mile actually traveled, and the further sum of five dollars (\$5.00) per day for expenses while absent from home upon business connected with the board.

All fees and moneys received under the provisions of this act shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the abstracters board of examiners.

History: En. Sec. 4, Ch. 105, L. 1931; amd. Sec. 124, Ch. 147, L. 1963.

Amendment

The 1963 amendment deleted "which amount shall be paid upon verified vouchers after allowance by said board out of any funds in the hands of the state treasurer in the abstracters board fund" at the end of the first paragraph; deleted a first sentence of the second paragraph reading,

"And there is hereby established a fund to be known as the abstracters board fund"; substituted "the earmarked revenue fund for the use of the abstracters board of examiners" at the end of the section for "the abstracters board fund, to meet the expenses incurred in carrying out the provisions of this act"; and deleted from the end of the section a proviso reading, "provided, the expenses of said board shall not exceed the fees collected."

66-2106. (4139.6) Repealed.

Repeal

Section 66-2106 (Sec. 6, Ch. 105, L. 1931; Sec. 125, Ch. 147, L. 1963), relating to

reports to governor by abstracters board of examiners, was repealed by Sec. 44, Ch. 93, Laws 1969.

CHAPTER 22—VETERINARY MEDICINE—REGULATION OF PRACTICE

- Section 66-2203. Expenses and funds—records and reports.
 66-2204. Applications for license to practice—examinations—fees.
 66-2209. Veterinary medicine defined.
 66-2209.1. When pregnancy testing by unlicensed persons permitted.
 66-2209.2. Statutory exemptions saved.

66-2203. (3219) Expenses and funds—records and reports. Each member of the board shall be entitled to receive all necessary traveling and subsistence expenses. The secretary-treasurer shall receive an additional salary to be fixed annually by the board and not to exceed five hundred dollars (\$500.00) per annum. The board shall keep full and complete minutes of its proceedings and of its receipts and disbursements and a full and accurate list of all persons licensed and registered by it, and such records shall be public records, and shall, at all times, be open to public inspection. All moneys received by the board shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the state board of veterinary examiners. Said board shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R. C. M. 1921; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969.

Amendments

The 1963 amendment deleted from the end of the first sentence a proviso reading, "provided such expenses shall not exceed the amount in the treasury during any fiscal year"; and substituted the fifth sentence (now the fourth sentence) for two sentences reading, "The secretary-treasurer of said board shall be the legal custodian of all moneys received for licenses or certificates of registration, as provided by this article, up to and including the sum of five thousand dollars (\$5,000.00). If, at any time, the amount of moneys received, after deducting such salaries

and expenses, shall amount to more than five thousand dollars (\$5,000.00), the secretary-treasurer shall forward the amount in excess of five thousand dollars (\$5,000.00) to the treasurer of the state of Montana, and receive his official receipt for same."

The 1965 amendment deleted a third sentence reading, "The board shall require the secretary-treasurer to give bond in such sum and with such conditions as the board may from time to time direct."

The 1969 amendment substituted the reporting requirements of section 82-4002 for former provision requiring annual reports.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

66-2204. (3220) Applications for license to practice—examinations—fees. Any citizen of the United States who is over the age of twenty-one (21) years desiring to begin the practice of veterinary medicine or veterinary surgery in the state of Montana, or who shall desire to hold himself or herself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in section 66-2211, shall make application to said board of examiners for license so to do. Such application shall be upon a form furnished by said board, and shall be accompanied by satisfactory evidence of the good moral character of the applicant, and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of said applicant shall be submitted to said board for inspection and verification, and such photostatic copy shall be and remain the property of the

board. Every person applying to said board for license to practice shall pay to the board the fee of twenty-five dollars (\$25.00), which fee shall in no case be refunded. Said board shall by means of examination, either oral or written or practical, or such combination of oral or written or practical as the board may determine, ascertain the professional qualifications for license of all applicants under this act, except that investigation under reciprocity arrangements may replace examination for licensees from other states as provided by section 66-2208, and the board shall issue such license to all who are found upon such examination or investigation to be in the judgment of said board competent to practice, and no such license shall be issued to any person who is not found by such examination or investigation to be competent.

Such examination shall be held in January and June of each year at a time and place or places specified by said board. Such examination shall cover theory and practice, materia medica and therapeutics, live-stock sanitation, surgery, and communicable diseases and such other subjects chosen by the board as are ordinarily included in the curriculum of a legally chartered school of veterinary medicine recognized and approved by the American veterinary medical association.

Said board shall consecutively number all applications received and note upon each the disposition made of it and preserve same for reference, and shall number consecutively all licenses issued; provided, that veterinarians who are at the time of the passage and approval of this act licensed and registered to practice veterinary medicine in the state of Montana, shall be entitled to a license without such examination.

All applicants must achieve a grade of seventy per cent (70%) in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be re-examined at any subsequent examination, shall pay another application fee in the amount of twenty-five dollars (\$25.00), and shall take another complete examination in all subjects.

An applicant for examination hereunder may in the discretion of the board be given a temporary permit to practice veterinary medicine prior to taking the examination, provided such applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this act; such temporary permit shall be valid only until the date of the next succeeding examination, and no longer, and under no circumstances shall the board issue a second temporary permit to the same person. A temporary permit shall not be issued to a person who has failed an examination given by the board.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R. C. M. 1921; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963.

"and which shall become a part of the funds of the treasury of the board" at the end of the fourth sentence of the first paragraph.

Amendment

The 1963 amendment deleted the words

66-2209. (3225) **Veterinary medicine defined.** Any person shall be deemed in the practice of veterinary medicine when he does any of the following:

(a) to (d). * * * [Same as parent volume.]

(e) Performs any manual or laboratory procedure for the diagnosis of pregnancy, sterility or infertility upon livestock for remuneration or hire.

No person shall practice veterinary medicine or veterinary surgery, or farriery, in the state of Montana unless licensed by the state board of veterinary medical examiners of the state of Montana, and registered as required by this chapter; nor shall any person practice veterinary medicine, surgery, or farriery, whose authority to practice is suspended or revoked by said board.

History: En. Sec. 9, Ch. 82, L. 1913; **Amendment**
re-en. Sec. 3225, R. C. M. 1921; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965. (e). The 1965 amendment added paragraph

66-2209.1. When pregnancy testing by unlicensed persons permitted. Nothing in this act shall in any way be construed to prohibit the pregnancy testing by any person of his own farm animals or by his employees regularly employed in the conduct of his business, or by other persons whose services are rendered gratuitously.

History: En. Sec. 2, Ch. 191, L. 1965.

Title of Act

An act to amend section 66-2209 of the Revised Codes of Montana of 1947, as amended by chapter 90 of the Laws of

1955, relating to the definition of veterinary medicine; by including in such definition the performance of procedure for diagnosis of pregnancy, sterility or infertility upon livestock for remuneration.

66-2209.2. Statutory exemptions saved. Nothing herein contained shall be construed as modifying, amending, altering, or repealing any part of section 66-2211 of the R. C. M. of 1947.

History: En. Sec. 3, Ch. 191, L. 1965.

CHAPTER 23—ENGINEERS AND LAND SURVEYORS

Section 66-2326. Definitions.

66-2327. Board—members—term.

66-2332. Board—powers.

66-2333. Receipts and disbursements—secretary—assistants.

66-2334. Records and reports—register.

66-2336. Requirements for registration.

66-2337. Application for registration—fees.

66-2338. Examinations.

66-2340. Expiration and renewals—fee.

66-2344. Registration of persons registered by other states or authorities.

66-2345. Revocation of registration—hearings—reissuance of certificate—appeals.

66-2347. Practices to which act inapplicable.

66-2324. Registration required.

References

Holdenbrand v. Montana State Board of Registration for Professional Engi-

neers and Land Surveyors, 147 M 271, 411 P 2d 744.

66-2326. Definitions. The term "engineer" as used in this act shall mean a professional engineer as hereinafter defined.

The term "professional engineer" within the meaning and intent of this act shall mean a person who, by reason of his special knowledge of the

mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as hereinafter defined, as attested by his legal registration as a professional engineer.

The term "engineer-in-training" as used in this act shall mean a candidate for registration as a professional engineer who is a graduate in an engineering curriculum of four years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development or its successor as an agency evaluating professional engineering curricula, or equivalent curricula as approved by the board, or who has had four years or more of experience in engineering work of a character satisfactory to the board; and who, in addition, has successfully passed the examination in the fundamental engineering subjects as provided in section 66-2338, and who shall have received from the board, as hereinafter defined, a certificate stating that he has successfully passed this portion of the professional examinations.

The term "practice of engineering" within the meaning and intent of this act shall mean any professional service or creative work requiring engineering education, training, and experience and the application of such special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects, and including such architectural work as is incidental to the practice of engineering.

The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment, or communication lines or signal circuits, or electric power lines or pipelines.

The term "land surveyor" as used in this act shall mean a person who engages in the practice of land surveying as hereinafter defined.

The practice of land surveying within the meaning and intent of this act includes surveying of areas for their correct determination and description and for conveyancing, or for the establishment or re-establishment of land boundaries and the plotting of lands and subdivisions thereof.

The term "board" as used in this act shall mean the state board of registration for professional engineers and land surveyors provided for by this act.

History: En. Sec. 3, Ch. 150, L. 1957; amd. Sec. 1, Ch. 282, L. 1969.

Amendments

The 1969 amendment, in the third paragraph defining "engineer-in-training," deleted "approved" before "engineering cur-

riculum" and inserted "or equivalent curricula as approved by the board" after "engineering curricula"; and in the fourth paragraph defining "practice of engineering," added "and including such * * * practice of engineering."

66-2327. Board—members—term. A state board of registration for professional engineers and land surveyors, is hereby created whose duty

it shall be to administer the provisions of this act. The board shall consist of five professional engineers, and two registered and practicing land surveyors, all of whom shall be appointed by the governor. No more than two members shall be from the same branch of the profession of engineering. All professional engineer members shall have the qualifications required by section 66-2328.

The members of the first board shall be appointed within ninety days after the passage of this act. Two members of the first board shall be members of the previous civil engineer board, and shall serve for one and two-year terms respectively. The other appointments to the first board shall be for the terms of three, four, and five years respectively, or until their successors are duly appointed and qualified. Every member of the board shall receive a certificate of his appointment from the governor and before beginning his term of office shall file with the secretary of state his written oath or affirmation for the faithful discharge of his official duty. Each member of the board first appointed hereunder shall receive a certificate of registration under this act from said board. On the expiration of the term of any member, the governor shall appoint for a term of five years a registered professional engineer, having the qualifications required by section 66-2328, or a licensed and practicing land surveyor, to take the place of the member whose term on said board is about to expire. The member so appointed by the governor shall have qualifications similar to the member whose term on said board is about to expire. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified. A member of the board may be appointed to succeed himself. No person shall be appointed to the board who has served two consecutive terms thereon. The governor shall within ninety days after the passage of this act appoint two licensed and practicing land surveyors to said board for a term of three and five years respectively.

History: En. Sec. 4, Ch. 150, L. 1957; amd. Sec. 2, Ch. 282, L. 1969.

Compiler's Notes

Chapter 282, Laws of 1969 was approved March 10, 1969.

Amendments

The 1969 amendment, in the second sen-

tence of the first paragraph, inserted "and two registered * * * all of whom"; in the fourth sentence, substituted "professional engineer" for "board"; in the sixth sentence of the second paragraph, inserted "or a licensed * * * surveyor" after "section 6-2328"; inserted the seventh sentence and added the last two sentences.

66-2332. Board—powers. The board shall have the power to adopt and amend all rules and regulations and rules of procedure, not inconsistent with the constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the regulations of the proceedings before it. The board shall adopt and have an official seal.

In carrying into effect the provisions of this act, the board, under the hand of its chairman and the seal of the board may subpoena witnesses and compel their attendance, and also may require the production

of books, papers, documents, etc., in a case involving the revocation of registration or practicing or offering to practice without registration. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person shall refuse to obey any subpoena so issued or shall refuse to testify or produce any books, papers, or documents, the board may present its petition to the district court, setting forth the facts, and thereupon such court shall, in a proper case, issue its subpoena to such person, requiring his attendance before such authority and there to testify or to produce such books, papers, and documents, as may be deemed necessary and pertinent by the board. Any person failing or refusing to obey the subpoena or order of the said court may be proceeded against in the same manner as for refusal to obey any other subpoena or order of said court. The practice of engineering or land surveying as defined herein, without a license is hereby declared to be a public nuisance.

History: En. Sec. 9, Ch. 150, L. 1957;
amd. Sec. 3, Ch. 282, L. 1969.

Amendments

The 1969 amendment added the last sentence.

66-2333. Receipts and disbursements—secretary—assistants. The secretary of the board shall receive and account for all moneys derived under the provisions of this act, and shall pay the same monthly to the state treasurer, who shall deposit such moneys in the earmarked revenue fund for the use of the state board of registration for professional engineers and land surveyors. The secretary of the board shall receive such salary as the board shall determine in addition to the compensation and expenses provided for in section 66-2329. The board may appoint an assistant secretary or executive secretary or may employ such clerical or other assistants as are necessary for the proper performance of its work.

History: En. Sec. 10, Ch. 150, L. 1957;
amd. Sec. 123, Ch. 147, L. 1963; amd. Sec.
28, Ch. 177, L. 1965.

Amendments

The 1963 amendment substituted "deposit such moneys in the earmarked revenue fund for the use of the state board of registration for professional engineers and land surveyors" at the end of the first sentence for "keep such moneys in a separate fund to be known as the 'professional engineers' fund'"; deleted the former second and third sentences reading, "Such fund shall be kept separate and apart from all other moneys in the treasury, and shall be paid out only by warrants drawn by the state auditor, upon claims filed and approved as required by law. All moneys in the 'professional engineers' fund' are hereby specifically appropriated for the use of the board"; deleted "and shall be paid out of the 'professional engineers' fund'" from the end of a third sentence later deleted by the 1965 amendment; and deleted from the end of the section language reading, "and

may make expenditures of this fund for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under this act, including the expenses of the board's delegates to annual conventions of, and membership dues to, the national council of state boards of engineering examiners. Under no circumstances shall the total amount of warrants issued by the state auditor in payment of the expenses and compensation provided for in this act exceed the amount of the examination and registration fees collected as herein provided."

The 1965 amendment deleted second and third sentences reading, "The secretary of the board shall give a surety bond to the state in such sum as the board may determine. The premium on said bond shall be regarded as a proper and necessary expense of the board."

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

66-2334. Records and reports—register. (1) The board shall keep a record of its proceedings and a register of all applicants for registration, which register shall show (a) the name, age, and residence of each applicant; (b) the date of the application; (c) the place of business of such applicant; (d) his educational and other qualifications; (e) the branch or branches of engineering in which the applicant qualified; (f) whether or not an examination was required; (g) whether the applicant was rejected; (h) whether a certificate of registration was granted; (i) the date of the action of the board; and (j) such other information as may be deemed necessary by the board.

(2) The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

(3) The board shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 11, Ch. 150, L. 1957; amd. Sec. 27, Ch. 93, L. 1969.

(1) and (2) and substituted the reporting requirements of section 82-4002 in subsection (3) for a former third paragraph which provided for annual reports and statements of receipts and expenditures.

Amendments

The 1969 amendment designated the first and second paragraphs as subsections

66-2336. Requirements for registration. The following shall be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer, or land surveyor, or for certification as an engineer-in-training, respectively:

(1) As a professional engineer:

a.—Graduation in an engineering curriculum of four years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development, or its successor as an agency evaluating professional engineering curricula or equivalent curricula as approved by the board; and a specific record of an additional four years or more of experience in engineering work of a character satisfactory to the board, and indicating that the applicant is competent to practice engineering (in counting years of experience, the board at its discretion may give credit, not in excess of one year, for satisfactory graduate study in engineering), and by successfully passing an oral or written examination, or both, as the board may determine; or

b and c. * * * [Same as parent volume.]

(2) As an engineer-in-training:

a.—Graduation in an engineering curriculum of four scholastic years or more from a school or college approved as of satisfactory standing by the engineers' council for professional development, or its successor as an agency evaluating professional engineering curricula, or equivalent curricula approved by the board, and successfully passing a written examination in the basic engineering subjects; or

b. * * * [Same as parent volume.]

(3) As a land surveyor:

a.—Graduation from a school or college approved as of satisfactory standing by the engineers' council for professional development, or its successor as an agency evaluating professional engineering curricula, including the completion of an approved course in surveying or equivalent surveying courses approved by the board, and an additional two years or more of experience in land surveying work of a character satisfactory to the board indicating that the applicant is competent to practice land surveying, and successfully passing a written, or written and oral, examination in surveying prescribed by the board; or

b. * * * [Same as parent volume.]

c.—Registration by comity or endorsement—a person holding a certificate of registration to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United States, will be given comity consideration. However, he may be asked to take such examinations as the board deems necessary to determine his qualifications, but in any event he shall be required to pass a written examination of not less than four hours' duration, which shall include questions on laws, procedures, and practices pertaining to practice in this state.

(4) The board may require any applicant to take a written or oral examination or both.

No person shall be eligible for registration as a professional engineer, or land surveyor, or certification as an engineer-in-training, who is not of good character and reputation.

In considering the qualifications of applicants, engineering teaching may be construed as engineering experience.

The satisfactory completion of each year of an approved curriculum in engineering in a school or college approved as of satisfactory standing by the engineers' council for professional development, or its successor as an agency evaluating professional engineering curricula or equivalent curricula approved by the board, without graduation, shall be considered as equivalent to a year of experience in section 66-2336 (1) b and (2) b. Graduation in a curriculum other than engineering from a college or university of recognized standing may be considered as equivalent to two years of experience in section 66-2336 (1) and (2) b; provided, however, that no applicant shall receive credit for more than four years of experience because of undergraduate educational qualifications.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not in itself be deemed to be qualifying engineering experience.

Any person having the necessary qualifications prescribed in this act to entitle him to registration shall be eligible for such registration although he may not be practicing his profession at the time of making his application.

History: En. Sec. 13, Ch. 150, L. 1957; Amendments
amd. Sec. 4, Ch. 282, L. 1969.

The 1969 amendment, in subdivision (1) (a), deleted "approved" before "engineering curriculum of four years"; in subdivi-

visions (1) (a) and (2) (a), inserted "or equivalent curricula as approved by the board" after "engineering curricula"; in subdivision (3) (a), inserted "or equivalent surveying courses approved by the board" after "in surveying" and inserted "and successfully * * * by the board" near the end of the subdivision; rewrote subdivision (3) (c) which formerly permitted registration of surveyors who had ten years experience and were over thirty years of age; inserted the first paragraph of subdivision (4) and inserted "or equivalent curricula approved by the board" in the fourth paragraph of that subdivision.

Examination of Registrant

State board was within its right to refuse engineer certification where he had failed the board's examination, and was not required to issue a certificate of registration simply because the registrant had worked for twelve years as an engineer and had just passed his thirty-fifth birthday. *Heldenbrand v. Montana State Board of Registration for Professional Engineers and Land Surveyors*, 147 M 271, 411 P 2d 744.

66-2337. Application for registration—fees. Applications for registration shall be on forms prescribed and furnished by the board, shall contain statements made under oath, showing the applicant's education and detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

The registration fee for professional engineers shall be twenty dollars (\$20.00), ten dollars (\$10.00) of which shall accompany application, the remaining ten dollars (\$10.00) to be paid upon issuance of certificate. When a certificate of qualification issued by the national bureau of engineering registration is accepted as evidence of qualification, the total fee for registration as professional engineer shall be ten dollars (\$10.00).

The fee for engineer-in-training shall be ten dollars (\$10.00), which shall accompany the application and shall include the cost of examination and issuance of certificate. When certification as an engineer-in-training by another state, or any territory or possession of the United States or any country, is accepted as evidence of qualification, the fee for engineer-in-training in Montana shall be one dollar (\$1.00). When registration as a professional engineer is completed by an engineer-in-training, an additional fee of ten dollars (\$10.00) shall be paid before issuance of certificate as a professional engineer.

The registration fee for land surveyors shall be ten dollars (\$10.00), which shall accompany the application. The fee for registration as both a professional engineer and land surveyor shall be thirty dollars (\$30.00), ten dollars (\$10.00) of which shall accompany the application, the remaining twenty dollars (\$20.00) to be paid upon issuance of certificate.

Should the board deny the issuance of a certificate of registration to any applicant the initial fee deposited shall be retained as an application fee.

History: En. Sec. 14, Ch. 150, L. 1957;
amd. Sec. 5, Ch. 282, L. 1969.

Amendments

The 1969 amendment inserted "or land surveyors" and "or land surveying" in the first paragraph.

66-2338. Examinations. The board may require any applicant to take a written or oral examination which shall be held at the time and place the board shall determine. The board may require a registrant

to take a written or oral examination, or both, in any proceeding to revoke, reprimand, suspend, or refuse to renew. When examinations are required on fundamental engineering subjects (such as are ordinarily given in college curricula), the applicant shall be permitted to take this part of the professional examination prior to his completion of the requisite years of experience in engineering work, and satisfactory passage of this portion of the professional examination by the applicant shall constitute a credit for a period of ten years. The board shall issue to each applicant upon successfully passing the examination in fundamental engineering subjects a certificate stating that he has passed the examination and that his name has been recorded as an engineer-in-training.

The scope of the examinations and the methods of procedure shall be prescribed by the board but, with special reference to the applicant's ability to design and supervise engineering works, so as to ensure the safety of life, health, and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration separately in engineering and in land surveying. A candidate failing on examination may apply for re-examination at the expiration of six months and will be re-examined without payment of additional fee. Subsequent examinations will be granted upon payment of a fee to be determined by the board.

History: En. Sec. 15, Ch. 150, L. 1957;
amd. Sec. 6, Ch. 282, L. 1969.

first two sentences for one reading, "When oral or written examinations are required, they shall be held at such time and place as the board shall determine."

Amendments

The 1969 amendment substituted the

66-2340. Expiration and renewals—fee. Certificates of registration shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed; provided, however, that certificates issued after the effective date of this act and prior to January 1, 1958, shall expire December 31, 1958. It shall be the duty of the secretary of the board to notify every person registered under this act, of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of December by the payment of a fee of ten dollars (\$10.00) for either a professional engineer or land surveyor or both. The failure on the part of any registrant to renew his certificate annually in the month of December as required above shall not deprive such person of the right of renewal, provided, however, any registrant who fails to pay said renewal fee for two (2) consecutive years shall be considered by the board to be a new applicant and shall be required to submit a new application.

History: En. Sec. 17, Ch. 150, L. 1957;
amd. Sec. 7, Ch. 282, L. 1969.

al fee from \$5 to \$10; and substituted the proviso at the end of the section for former provisions reading, "but the fee to be paid for the renewal of a certificate after the month of December shall be in-

Amendments

The 1969 amendment raised the renew-

creased ten per cent for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the normal renewal fee."

66-2344. Registration of persons registered by other states or authorities. The board may, upon application therefor, and the payment of a fee of ten dollars (\$10.00), issue a certificate of registration as a professional engineer to any person who holds a certificate of qualification or registration issued to him by proper authority of the National Bureau of Engineering Registration, or of any state or territory or possession of the United States, or of any country, provided that the applicant's qualifications meet the requirements of this act and the rules established by the board.

History: En. Sec. 21, Ch. 150, L. 1957; national council of state boards of engineering examiners, or" before "of the National Bureau of Engineering Registration."
amd. Sec. 8, Ch. 282, L. 1969.

Amendments

The 1969 amendment deleted "of the

66-2345. Revocation of registration—hearings—reissuance of certificate—appeals. The board shall have the power to revoke, reprimand, suspend, or refuse to renew the certificate of any registrant who is found guilty of:

(a) The practice of any fraud or deceit in obtaining a certificate of registration;

(b) Any gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or land surveyor.

(c) Any felony.

(d) The failure of any land surveyor to comply with the Corner Recordation Act.

Any person may prefer charges of fraud, deceit, gross negligence, incompetency, or misconduct against any registrant. Such charges shall be made by affidavit, and shall be subscribed and sworn to by the person making them, and shall be filed with the secretary of the board.

All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three months after the date on which they shall have been preferred.

The time and place for said hearing shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on or mailed to the last known address of such registrant, at least thirty days before the date fixed for the hearing. At any hearing, the accused registrant shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him, and to produce evidence and witnesses in his own defense.

If, after such hearing, four or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of such registered professional engineer or land surveyor.

The board, for reasons it may deem sufficient, may reissue a certificate of registration to **any person** whose certificate has been revoked, providing four or more members of the board vote in favor of such reissuance. A new certificate of registration, to replace any certificate revoked, lost, destroyed, or mutilated, may be issued, subject to the rules of the board, and a charge of three dollars (\$3.00) shall be made for such issuance.

Any person who shall feel aggrieved by any action of the board in denying, reprimanding, suspending, refusing to renew or revoking his certificate of registration may appeal therefrom to the district court of the county in which such denial, suspension, reprimand, refusal to renew, or revocation was made, and after full hearing, said court shall make such decree sustaining or reversing the action of the board as to it may seem **just and proper**.

History: En. Sec. 22, Ch. 150, L. 1957; amd. Sec. 9, Ch. 282, L. 1969.

Amendments

The 1969 amendment inserted references to reprimand, suspension and refusal to renew license before references to revocation or revoking of license throughout the section; deleted "registration of" after "certificate of" in the introductory paragraph; inserted items (c) and (d); in the second paragraph, substituted "made by affidavit" for "in writing" and inserted "subscribed and" before "sworn"; in the fifth paragraph, substituted "four" for "three" and "sustaining the charges" for "finding the accused guilty"; and in the sixth paragraph, substituted "four" for "three."

Constitutionality

There is no unconstitutional supplant-

ing of administrative powers and authority by the courts in the procedure stipulated in this section for appeal, since the court still must follow statutory guidelines in making corrections, where necessary, of the administrative body's exercise of judgment. *Heldenbrand v. Montana State Board of Registration for Professional Engineers and Land Surveyors*, 147 M 271, 411 P 2d 744.

Right of Appeal

The right of appeal under this section applies not only to cases where registration is revoked or reissuance of a certificate already revoked is denied but also to cases involving an original application for registration. *Heldenbrand v. Montana State Board of Registration for Professional Engineers and Land Surveyors*, 147 M 271, 411 P 2d 744.

66-2347. Practices to which act inapplicable. This act shall not be construed to prevent or to affect:

(a) and (b). * * * [Same as parent volume.]

(c) The practice of a person not a resident of and having no established place of business in this state, practicing or offering to practice herein the profession of engineering when such practice does not exceed in the aggregate more than thirty days in any calendar year; provided such person is legally qualified by registration to practice the said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act; or

(d). * * * [Same as parent volume.]

(e) The performance of professional engineering functions or work by a person who is an employee or acts under the supervision and direction of a professional engineer, provided such person is not in responsible charge of such engineering work; or

(f) to (h). * * * [Same as parent volume.]

History: En. Sec. 24, Ch. 150, L. 1957; amd. Sec. 10, Ch. 282, L. 1969.

Compiler's Notes

The title of Chapter 282, Laws 1969 made no reference to the amendment of this section.

Amendments

The 1969 amendment, in subdivision

(c), deleted "or land surveying" after "profession of engineering"; and, in subdivision (e), deleted "of" after "an employee."

Repealing Clause

Section 11 of Ch. 282, Laws 1969 repealed all acts and parts of acts in conflict therewith.

CHAPTER 24—PLUMBERS

- Section 66-2402. Application for state license—qualifications of licensees.
 66-2403. Board of plumbing examiners—appointment—terms—compensation—examination of applicants.
 66-2405. Examination fee—expiration of license—annual renewal—fees—bond required of master plumbers.
 66-2407. Disposition of license fees.
 66-2416. Minimum standards—state plumbing code—fee for copy of code.
 66-2427. Fixture fee—definition—payment—penalty.

66-2402. Application for state license—qualifications of licensees. Any such person desiring to work at the business of plumbing in any such city or town shall file his application for a state license with the secretary of the board of plumbing examiners of the state of Montana, and shall at such time and place as may be designated by the board of examiners of plumbers of the state of Montana, be examined as to his qualifications for working in such business.

The following requirements shall be met by applicants for a state license: (1) For journeyman plumbers:

(a) A specific record of five years experience in the field of plumbing, of a character satisfactory to the board. This experience requirement may be fulfilled by working five years in any major phase of the plumbing business, or by completing an apprenticeship program meeting the standards set by the Montana state apprenticeship council or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending trade or other schools specializing in training of value in the plumbing business and approved by the board.

(b) Satisfactory completion of an examination conducted by the board testing the applicant's general knowledge of subjects necessary to plumbing, testing his knowledge of techniques and methods employed in the plumbing business, and establishing by practical demonstration his competence in the special skills required in plumbing.

(2) For master plumbers:

(a) Evidence of five years experience as a journeyman plumber.

(b) Evidence of three years experience in supervisory capacities in the plumbing business.

(c) Satisfactory completion of an examination for master plumbers testing his knowledge of the plumbing business and demonstrating his familiarity with business practices normally encountered in the plumbing business.

History: En. Sec. 2, Ch. 203, L. 1949;
amd. Sec. 1, Ch. 186, L. 1965.

Amendment

The 1965 amendment added everything
after the first paragraph.

66-2403. Board of plumbing examiners—appointment—terms—compensation—examination of applicants. Within sixty days after this act becomes a law, the governor of the state of Montana shall appoint a board of plumbing examiners consisting of seven members—two master plumbers, two journeyman plumbers, who shall be of legal age, residents of Montana for more than one year and shall have been at least five out of the last eight years, immediately preceding their appointment, duly licensed master or journeyman plumbers, one registered professional engineer, qualified in mechanical engineering, one member to be appointed at large as representative of the public who is not engaged in the business of installing or selling plumbing equipment, and the appointed representative of the Montana state board of health, who shall be a sanitary engineer and who shall be the secretary of the state board of plumbing examiners. The office of the engineer of the state board of health shall act as the office through which all business of the board shall be transacted. The appointed members of this board of plumbing examiners shall serve for a period of four years from the date of their appointment, providing however, the first board of plumbing examiners shall serve as follows: one member for one year, one member for two years, one member for three years and one member for four years and the governor in making the appointment shall designate the time that each member constituting the first board shall serve. Thereafter, upon the expiration of the term of office of each member of the board of plumbing examiners or when a vacancy occurs, the governor shall make a new appointment for the unexpired term or for a period of four years. The journeyman plumber whose term would next expire after passage and approval of this act is hereby removed from said board and in his place and stead shall be installed said registered professional engineer, qualified in mechanical engineering. The members of the said board shall be entitled to a compensation of twenty dollars per diem, each, for each and every day while actually engaged in the work of the board, the compensation, however, to be paid from the revenue realized under the provisions of this act, but not otherwise. Any applicant for a state license to work at the business of plumbing in this state shall be examined as to his qualifications by the board of examiners of plumbers for the state of Montana. It shall be the duty of the said board to examine each applicant for a state license as provided for in this act, to determine his qualifications and fitness for carrying on the business of a master plumber or journeyman plumber, and if the applicant successfully passes the examination as prescribed by the said board, then a state license shall be issued to such applicant for such license, authorizing him to engage in the business and occupation of a master plumber or journeyman plumber, as the case may be, which license, when issued, shall authorize the holder thereof to carry on the business of a master plumber or a journeyman plumber, as the case may be, in any city or town in the state of Montana.

The additional members of the board shall be appointed by the governor to serve terms commencing July 1, 1965. The additional master plumber's term shall be coextensive with the present journeyman plumber's term, and the additional journeyman plumber's term shall be coextensive with the present master plumber's term, and thereafter their respective terms shall be for four years.

History: En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965.

Amendments

The 1963 amendment deleted the words "the compensation, however, to be paid

from the revenue realized under the provisions of this act, but not otherwise" at the end of the sixth sentence.

The 1965 amendment added one master plumber and one journeyman plumber to the board; restored to the sixth sentence the words deleted by the 1963 amendment; and added the second paragraph.

66-2405. Examination fee—expiration of license—annual renewal—fees—bond required of master plumbers. No applicant for a master plumber's license shall be entitled to submit to the examinations prescribed by the said board of plumbing examiners until he shall have deposited with the secretary of the said board the sum of fifty (\$50.00) dollars as an examination fee, and no applicant for a journeyman plumber's license shall be entitled to submit to the examination prescribed by the said board of plumbing examiners until he shall have deposited with the secretary of said board the sum of twenty-five (\$25) dollars as an examination fee. Each state license when issued shall expire one year from the date of its issuance, and shall have no force or effect after the expiration of one year after the date of its issuance. Any state license, however, issued to a master plumber or a journeyman plumber shall be renewed annually, without examination, at any time prior to its expiration, by a written request for its renewal, directed to the secretary of the said board of plumbing examiners, and the payment of the sum of twenty-five (\$25) dollars for a renewal of a master plumber's license, and the sum of ten (\$10) dollars for a journeyman plumber's license, and any such renewal shall also be for the period of one year. After July 1, 1961, no master plumber's license shall be issued or renewed unless and until the applicant therefor shall have deposited with the board a good and sufficient bond to be approved by the board, or cash in lieu thereof, in the amount of five thousand dollars (\$5,000) to insure the faithful performance of his duties arising out of the provisions of the state plumbing code or the provisions of chapter 24, Title 66, Revised Codes of Montana.

History: En. Sec. 5, Ch. 203, L. 1949; amd. Sec. 3, Ch. 185, L. 1961; amd. Sec. 1, Ch. 237, L. 1965.

Amendment

The 1965 amendment increased the examination fees specified in the first sen-

tence from \$25 to \$50 for master plumbers, and from \$10 to \$25 for journeyman plumbers; and increased the renewal fees specified in the second sentence from \$10 to \$25 for master plumbers, and from \$5 to \$10 for journeyman plumbers.

66-2407. Disposition of license fees. All moneys paid for state license fees as provided for in this act shall be deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of plumbing examiners.

History: En. Sec. 7, Ch. 203, L. 1949; amd. Sec. 144, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted the words "deposited with the state treasurer to the credit of the earmarked revenue fund for the use of the board of plumbing

examiners" for the words "placed in the custody of the state treasurer, who shall keep such sums in a distinct fund, and any moneys in such fund shall be applied in defraying any expenses incurred by the state board of examiners of plumbers in carrying out the provisions of this act" at the end of this section.

66-2416. Minimum standards—state plumbing code—fee for copy of code. (1) The state plumbing board shall, by rule, prescribe minimum standards which shall be uniform and which standards shall thereafter be effective for all new plumbing installations; such rules shall contain the minimum requirements for plumbing as set forth in the American standard national plumbing code, numbered ASA A40.8-1955, and published by the American Society of Mechanical Engineers. Except as provided in subsection (2) of this section, upon approval of the state board of health and the attorney general and their legal publication, the rules shall be the state plumbing code and shall have the force of law. A copy of the code shall be supplied to each person licensed under the provisions of sections 66-2401 to 66-2411 R. C. M. 1947, of the laws of the state of Montana, or any other interested person, for a fee of no more than five dollars (\$5).

(2) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the state building code council and filing with the secretary of state.

History: En. Sec. 5, Ch. 251, L. 1959; amd. Sec. 18, Ch. 366, L. 1969.

Amendments

The 1969 amendment designated the former section as subsection (1) and added subsection (2); in subsection (1),

the amendment substituted "rule" and "rules" for "regulation" and "regulations" in the first sentence; and in the second sentence substituted "except as provided in subsection (2) of this section" for "such regulations" and inserted "the rules" before "shall be the state plumbing code."

66-2418. Repealed.

Repeal

This section (Sec. 7, Ch. 251, L. 1959), relating to payment of expenses of the board, was repealed by Sec. 242, Ch. 147, Laws 1963.

Compiler's Note

Section 3, Ch. 186, Laws 1965, purported to amend this section, but the attempted amendment is apparently void under the provisions of sec. 43-515. As amended in 1965, the section would have read:

"66-2418. Expenses—defraying. Any moneys paid for state license fees for state plumber licenses, as provided for in Title 66, chapter 24 [66-2401 to 66-2411] of the laws of the state of Montana, may be applied in defraying the expense of the board in carrying out the provisions of this act.

"For the purpose of providing adequate inspection and enforcement of the state plumbing code provided for in this chapter there shall be collected a fixture fee of

fifty cents per fixture for every fixture installed after July 1, 1965. For this purpose, a fixture shall mean any device connected by a water connection to a water system or by a trap to a sewer line. This fixture fee shall be payable before installation by the licensed master plumber responsible for installation of the fixture. It shall be payable to the state plumbing board under regulations prescribed by the board for the purposes set forth herein, and the board may assign the inspection and enforcement of the state plumbing code and collection of such fees to a state plumbing inspector, and such deputies as may be reasonably necessary to accomplish adequate inspection, enforcement and collection. Installation of fixtures as defined herein by a licensed master plumber without payment of the fee herein provided shall subject such master plumber to a fine of \$100 for each offense or to forfeiture of his bond under section 66-2405."

66-2424. Repealed.**Repeal**

Section 66-2424 (Sec. 13, Ch. 251, L. 1959), relating to municipal ordinances for

plumbing standards, was repealed by Sec. 27, Ch. 366, Laws 1969.

66-2427. Fixture fee—definition—payment—penalty. For the purpose of providing adequate inspection and enforcement of the state plumbing code provided for in this chapter there shall be collected a fixture fee of fifty cents (\$.50) per fixture for every fixture installed under the direction of a master plumber after the effective date of this act. For this purpose, a fixture shall mean any device connected by a water connection to a water system or by a trap to a sewer line. This fixture fee shall be payable before installation by the licensed master plumber responsible for installation of the fixture. It shall be payable to the state plumbing board under regulations prescribed by the board for the purpose set forth herein, and the board may assign the inspection and enforcement of the state plumbing code and collection of such fees to a state plumbing inspector, and such deputies as may be reasonably necessary to accomplish adequate inspection, enforcement and collection. Installation of fixtures as defined herein by a licensed master plumber without payment of the fee herein provided shall subject such master plumber to a fine of one hundred dollars (\$100) for each offense or to forfeiture of his bond under section 66-2405.

History: En. Sec. 1, Ch. 236, L. 1967.

Title of Act

An act to amend chapter 24 of Title 66, R. C. M. 1947, by adding a new section thereto establishing a fixture fee to be used for the inspection and enforcement of the State Plumbing Code and authorizing a state plumbing inspector, and providing for a penalty for failure to pay the fixture fee established; and repealing acts or parts of acts in conflict herewith; and providing an effective date.

Separability Clause

Section 2 of Ch. 236, Laws 1967 read "If any part of this act shall for any rea-

son be held invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining parts of this act."

Repealing Clause

Section 3 of Ch. 236, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 236, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

CHAPTER 25—PHYSICAL THERAPISTS PRACTICE ACT

Section 66-2503. Application for examination—examination fee.
66-2508. Annual extension of license.

66-2503. Application for examination—examination fee. Unless entitled to a license under section 66-2504 or 66-2505, a person who desires to be licensed as a physical therapist shall apply to the board, in writing, on a blank furnished by the board. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by section 66-2502. He shall pay to the secretary of the board of medical examiners at the time of filing his application a fee of twenty-five dollars (\$25.00) which shall be de-

posited in the earmarked revenue fund for the use of the board of medical examiners. Anyone failing to pass the required examination shall be entitled to a second examination within six months without additional fee.

History: En. Sec. 3, Ch. 39, L. 1961; amd. Sec. 133, Ch. 147, L. 1963.

Amendment

The 1963 amendment inserted the words "which shall be deposited in the earmarked revenue fund for the use of the

board of medical examiners" at the end of the third sentence and deleted a former fourth sentence which read: "This fee will become part of the board of medical examiners' fund and shall not be used or expended for any purpose other than as provided for in section 66-1009."

66-2508. Annual extension of license. Every licensed physical therapist shall, during January, 1962, and during every January thereafter, apply to the board for an extension of his license and pay a fee of five dollars (\$5). A license that is not so extended, in the first instance before April 1, 1962, and thereafter before April, every year, shall automatically lapse. The board may in its discretion revive and extend a lapsed license on the payment of all past unpaid extension fees.

History: En. Sec. 8, Ch. 39, L. 1961; amd. Sec. 1, Ch. 353, L. 1969.

Amendments

The 1969 amendment raised the fee from \$2 to \$5.

CHAPTER 26—WATER WELL CONTRACTOR'S LICENSE ACT

Section 66-2604. Water well contractor's examining board—members—terms—oath—seal—employees.

66-2605. Powers and duties of the board.

66-2606. Water well contractor's licenses.

66-2615. Completion of contracts by successor in interest of licensed contractor.

66-2602. Purpose of the act—definitions—exemptions.

History: En. Sec. 2, Ch. 176, L. 1961; amd. Sec. 2, Ch. 234, L. 1963.

Compiler's Note

Section 2, Ch. 234, Laws 1963, purported to amend this section, but it made no change.

66-2604. Water well contractor's examining board—members—terms—oath—seal—employees. (1). * * * [Same as parent volume.]

(2) The water well contractor's examining board of the state of Montana shall be composed of one (1) nonvoting member and three (3) voting members. The one (1) nonvoting member shall be a technical adviser hydrogeologist appointed by the director of the Montana bureau of mines and geology. Of the three (3) voting members one (1) member shall be the state engineer, appointed, qualified and acting pursuant to the provisions of section 81-2006; one (1) member shall be the director of the division of environmental sanitation of the state board of health of the state of Montana; and one (1) member shall be appointed by the governor with the concurrence of the state senate. In making this appointment, the governor may consider recommendations made to him by the Montana water well drillers association, and shall be from the water well drilling industry. The appointive member of the board shall serve for a term of three (3) years. In case of a vacancy in the

office of a member of the board, an appointment shall be made to fill the same in the manner prescribed by the constitution and laws of this state. The appointive member of the board shall have been a bona fide resident of this state for a period of at least three (3) years prior to such appointment and shall have had at least five (5) years' experience in the water well drilling business.

(3) and (4). * * * [Same as parent volume.]

(5) The board may, in its discretion, employ a secretary and such other persons as may be necessary to perform the duties of the board, either upon a part-time basis or upon a full-time basis. Each appointed member of the board who is not a government employee shall receive, as compensation for his services, the sum of twenty dollars (\$20) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided by law. The state engineer and the director of environmental sanitation of the state board of health of the state of Montana shall receive no extra compensation for their services as members of the board.

History: En. Sec. 4, Ch. 176, L. 1961; amd. Sec. 152, Ch. 147, L. 1963; amd. Sec. 1, Ch. 278, L. 1969.

Compiler's Notes

Section 81-2006, referred to in subsection (2), was repealed by Secs. 1 and 22, Ch. 280, Laws 1965.

Amendments

The 1963 amendment deleted from subd. (5) a former second sentence which read: "Payment for any such services shall be made out of the hereinafter designated fund, and no other" and a former fourth sentence which read: "Such payments to the appointed member of compensation, mileage and per diem ex-

penses shall be made out of the herein-after designated fund, and no other."

The 1969 amendment, in subsection (2), at the end of the first sentence, substituted "one (1) nonvoting * * * voting members" for "three (3) persons"; inserted the second sentence; inserted "Of the three (3) voting members" at the beginning of the third sentence and substituted "member" for "of said persons" where the references appear; in the fifth sentence, substituted "the board" for "said board"; in subsection (5), at the beginning of the second sentence, substituted "Each" for "The," inserted "who is not a government employee" and raised the compensation from \$15 to \$20 per day.

66-2605. Powers and duties of the board. (1) to (4). * * * [Same as parent volume.]

(5) Within one hundred twenty (120) days of the effective date of this act, the board shall organize and conduct a public hearing for the purpose of adopting reasonable rules and regulations for the future conduct of its business. Such hearing shall be had only after at least ten (10) days' printed notice of the same has been given, announcing the hearing, the time, the place and the purpose therefor. Publication shall be made in at least five (5) daily newspapers in this state. Following such hearing, said rules and regulations shall be adopted and compiled in printed form for distribution to interested persons, for which the board may charge a fee; and sums realized from such sales shall be deposited with the treasurer of this state in the earmarked revenue fund for the use of the water well contractor's examining board.

(6). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 176, L. 1961; amd. Sec. 153, Ch. 147, L. 1963; amd. Sec. 3, Ch. 234, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 234. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 147, Laws 1963, substituted "the earmarked revenue fund for the use of the water well contractor's examining board" at the end of subsection (5) for language reading, "a special fund to be designated as the 'Water Well Con-

tractor's Examining Board Fund,' and the funds therein shall be used for the purpose of paying expenses of the board, and for no other purpose. All sums expended from this fund shall be approved as provided by law. Upon termination of this board, any balance remaining in said fund shall be paid over to the general fund of the state of Montana. All accounts and expenditures of said board shall be certified by the board, approved by the board of examiners of the state of Montana, and paid by the state treasurer upon warrants drawn by the state auditor out of said fund."

Chapter 234, Laws 1963, substituted "for which the board may charge a fee" in the fourth sentence of subsection (5) for "The board shall charge a fee of fifty cents (50¢) per copy"; and made minor changes in punctuation.

66-2606. Water well contractor's licenses. Any person desiring to engage in the drilling, making or construction of one (1) or more wells for underground water in this state shall first file an application with the board for a contractor's license, setting out his qualifications therefor, the equipment proposed to be used in such contracting, and such other business as may be required by the board, all upon forms to be adopted by the board. The board shall charge a fee of one hundred dollars (\$100.00) for the filing of such application by any person, and it shall not act upon any application until such fee has been paid. All fees collected hereunder shall be deposited with the state treasurer in the earmarked revenue fund for the use of the water well contractor's examining board. A license to construct water wells shall be issued to any applicant if, in the opinion of the board, such applicant is qualified to conduct water well construction operations. In the granting of such licenses, the board shall have due regard for the interest of the state of Montana in the protection of its underground waters. Applicants for licenses hereunder who have engaged in the business of water well drilling or construction for a period of more than three (3) years prior to the effective date of this act, and who have been bona fide residents of the state of Montana for more than one (1) year preceding the date of application, may, at any time within one (1) year after the effective date of this act make application for license hereunder and payment of the fee of one hundred dollars (\$100.00), as herein provided, and the board shall issue a license to any such applicant without examination, when he shall submit evidence, under oath, satisfactory to the board that he is of good character, that he was engaged in the occupation of water well contractor at the time this act became effective, and that his work as such is satisfactory to the board. All other applicants shall be subject to examination as hereinafter provided.

A temporary water well contractor's license may be issued to a person who, by evidence satisfactory to the board, is found to possess the qualifications numbered (1) through (6) set out in section 66-2608, R.C.M., 1947, and who shall have applied for license as provided by this act. Such temporary license shall entitle the holder thereof to engage in the business

of drilling, making or construction of water wells until the time of the next ensuing examination given by the board. Upon such applicant's successfully meeting the board's requirements upon such examination, the temporary license shall be returned to the board and a regular license issued. Should the holder of a temporary license fail, after notice of the holding of such examination, to submit himself for examination or to meet the board's requirements, such temporary license shall expire and be returned to the board for cancellation.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963.

Compiler's Note

This section was amended twice in 1963, once by Ch. 147 and once by Ch. 234. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, however, the compiler has made a composite section incorporating both amendments.

Amendments

Chapter 147, Laws 1963, substituted "earmarked revenue fund for the use of the water well contractor's examining board" for "water well contractor's examining board fund, and shall be used to pay expenses of the board as set forth in this act, and for no other purpose" at the end of the third sentence.

Chapter 234, Laws 1963, added the second paragraph.

66-2614. Repeal clause—construction of act.

Compiler's Notes

Sections 69-1301 to 69-1320, contained in the reference to sections 69-1301 through 69-1341, in this section in the parent volume, were repealed by Sec. 223, Ch. 197,

Laws 1967. Sections 69-1321 to 69-1325 were repealed by Sec. 15, Ch. 142, Laws 1955; and sections 69-1326 to 69-1346 were repealed by Sec. 223, Ch. 197, Laws 1967.

66-2615. Completion of contracts by successor in interest of licensed contractor. Upon the transfer, by operation of law, to the successor in interest of a licensed water well contractor's rights under a contract or agreement for the drilling or making of a water well or wells, the successor in interest to such rights shall be permitted to engage in the business of drilling, making or construction of water wells to the extent necessary to perform the obligations of said licensed water well contractor under such contract or agreement, provided that such engagement in business shall be under the supervision of a licensed water well contractor.

History: En. Sec. 1, Ch. 234, L. 1963.

Title of Act

An act to permit the successor in interest to the rights of a licensed water well contractor under a contract for water well construction to engage in the water well construction business to the extent necessary to fulfill said contractor's obligations and providing conditions therefor; amending section 66-2602, R. C.M., 1947, as amended, to permit compliance with the examination and licensing

provisions of the Montana Water Well Contractor's License Act by any one member of a firm, copartnership or association or the manager of a corporation; amending section 66-2605, R.C.M., 1947, as amended, to make permissive the exacting of a fee for copies of board rules and regulations; and amending section 66-2606, R.C.M., 1947, as amended, to permit the temporary licensing of a water well contractor prior to examination for competency and providing conditions therefor.

CHAPTER 27—MORTICIANS AND FUNERAL DIRECTORS

Section 66-2701. Definitions.

66-2702. State board of morticians—appointment and term of office.

66-2703. Officers of board—compensation of members.

- 66-2704. Meetings—quorum—rules and regulations.
- 66-2705. Employees of board.
- 66-2706. Disposition of fees.
- 66-2707. Funeral directing.
- 66-2708. Embalming and mortuary science—qualifications for mortician's license.
- 66-2709. Examination for morticians.
- 66-2710. Intern mortician's license.
- 66-2711. Mortician's license—fee and renewal.
- 66-2712. Reciprocity.
- 66-2713. Operation and licensing of mortuaries.
- 66-2714. Refusal to grant, suspension and revocation of mortician's and funeral director's license.
- 66-2715. Hearing and notice—revocation and suspension of licenses.
- 66-2716. Appeal.
- 66-2717. Penalty provision.

66-2701. Definitions. As used in this act

(1) "Board" means the state board of morticians.

(2) "Funeral directing" includes

(a) supervising funerals,

(b) preparing dead bodies for burial other than by embalming,

(c) maintaining a mortuary for the preparation, disposition or care of dead human bodies, and

(d) the holding out to the public that one is a funeral director or undertaker.

(3) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals externally, internally, or both.

(4) "Mortuary science" is the profession or practice of funeral directing and embalming.

(5) A "mortician" is a person licensed under the laws of the state of Montana to practice mortuary science.

(6) A "mortuary" is a place of business used for the care and preparation for burial or transportation of dead human bodies, or a place where a person represents himself as engaged in the profession of mortuary science or funeral directing.

History: En. Sec. 1, Ch. 41, L. 1963.

Title of Act

An act regulating the operation of mortuaries and the practice of mortuary science and funeral directing; establishing

a state board of morticians; amending sections 69-119, 69-2306, 69-2309, 69-2310, and 9-604, R.C.M. 1947; and repealing sections 82-701, 82-702, 82-703, 82-704, 82-705, 82-706, 82-707, 82-708, 82-709, 82-710, and 82-711, R.C.M. 1947.

66-2702. State board of morticians—appointment and term of office. There is in state government a state board of morticians consisting of five licensed morticians appointed by the governor with the advice and consent of the senate. The original members of the board shall be appointed for one (1), two (2), three (3), four (4), and five (5) year terms. An appointment to replace a member whose term has expired shall be for five (5) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term.

History: En. Sec. 2, Ch. 41, L. 1963.

66-2703. Officers of board—compensation of members. The board shall elect a chairman, a secretary-treasurer, and any other necessary officers. Board members shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in attending meetings or in the discharge of other board duties. In addition to such reimbursement the secretary-treasurer may be paid a salary set by the board.

History: En. Sec. 3, Ch. 41, L. 1963.

66-2704. Meetings—quorum—rules and regulations. The board shall hold such meetings as may be necessary. Three members constitute a quorum for the transaction of business. The board may adopt and enforce rules and regulations to carry out the purposes of this act.

History: En. Sec. 4, Ch. 41, L. 1963.

66-2705. Employees of board. The board may employ whatever temporary or permanent personnel are necessary to carry out the provisions of this act.

History: En. Sec. 5, Ch. 41, L. 1963.

66-2706. Disposition of fees. All moneys collected by the board shall be deposited with the state treasury and shall be used only for the purposes of defraying the necessary expenses of administering this act.

History: En. Sec. 6, Ch. 41, L. 1963.

66-2707. Funeral directing. The practice of funeral directing is prohibited by anyone who does not hold a funeral director's license or a mortician's license issued by the board. A person licensed to practice funeral directing on June 1, 1963 is entitled to an annual renewal of his license upon payment of an annual license fee to the board on July 1 of each year. The amount of the annual license fee shall be set by the board but shall not exceed five dollars (\$5). A funeral director's license shall not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963.

History: En. Sec. 7, Ch. 41, L. 1963.

66-2708. Embalming and mortuary science—qualifications for mortician's license. The practice of embalming or mortuary science is prohibited by anyone who does not hold a mortician's license issued by the board. To qualify for a mortician's license a person must

(1) Be at least twenty-one (21) years of age.

(2) Be of good moral character.

(3) Have graduated from an accredited college of mortuary science, and have satisfactorily completed two (2) academic years at an accredited college or university. This subsection shall not apply to a person who is enrolled in an accredited college of mortuary science on the effective date of this act.

(4) Pass an examination prescribed by the board.

(5) Serve a one (1) year internship under the supervision of a mortician in a licensed mortuary in Montana.

History: En. Sec. 8, Ch. 41, L. 1963.

66-2709. Examination for morticians. A person possessing the necessary qualifications may apply to the board for a license and upon payment of an application fee of twenty-five [dollars] (\$25.00), may take the examination prescribed by the board. The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board deems necessary.

History: En. Sec. 9, Ch. 41, L. 1963.

Compiler's Note

The compiler has inserted the bracketed word "dollars."

66-2710. Intern mortician's license. An applicant who passes the examination, upon payment of a license fee of three dollars (\$3.00), shall be granted an intern mortician's license to practice mortuary science under the supervision of a mortician in a licensed mortuary in Montana, and upon completion of one year's internship and payment of the annual license fee, may apply for and receive a mortician's license.

History: En. Sec. 10, Ch. 41, L. 1963.

66-2711. Mortician's license—fee and renewal. (1) The annual license fee for a mortician's license must be in the hands of the secretary-treasurer or postmarked before July 1 of the assessment year. The amount of the annual license fee shall be set by the board but shall not exceed ten dollars (\$10.00). A person holding a license issued by the board of embalmers and funeral directors to practice embalming on June 1, 1963 may, within two (2) years of such date, apply for and receive a mortician's license upon payment of the license fee.

(2) Failure to pay the annual license fee shall result in automatic suspension of the license. The license may be reinstated by the payment of all unpaid license fees plus a penalty of twenty-five dollars (\$25.00).

History: En. Sec. 11, Ch. 41, L. 1963.

66-2712. Reciprocity. If a person holding a license entitling him to practice mortuary science in another state applies for a Montana mortician's license, the board may waive the examination and internship requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana and if such state has a reciprocal agreement with Montana.

History: En. Sec. 12, Ch. 41, L. 1963.

66-2713. Operation and licensing of mortuaries. (1) An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place. The board may adopt rules and regulations prescribing reasonable standards for such establishments, including minimum requirements for drainage, ventilation, and instruments, and may inspect the premises of a mortuary establishment to determine if such rules and

regulations are complied with. Such inspection or inspections shall be made at the discretion of the board, and may be without notice.

(2) The board may charge the operator an inspection fee to be set at the discretion of the board, but not to exceed twenty-five dollars (\$25.00) per year.

(3) A mortuary license may be suspended or revoked upon proof of

(a) noncompliance of board rules or regulations relating to the operation of mortuaries,

(b) violation of any of the laws, rules, or regulations of the state, district, or local board of health governing the disposition of dead human bodies, or,

(c) violation of any rule of the board regulating the practice of mortuary science and funeral directing.

(4) The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

History: En. Sec. 13, Ch. 41, L. 1963.

66-2714. Refusal to grant, suspension and revocation of mortician's and funeral director's license. The board may refuse to grant, may suspend, or may revoke a mortician's or funeral director's license for any of the following reasons:

(1) If the applicant or licensee obtained the license by fraud or misrepresentation, either in the application for the license, or in passing the examination.

(2) If the applicant or licensee has been convicted of a felony.

(3) If the applicant or licensee has violated any section of this act or any rule or regulation of the state, district, or local board of health governing the disposition of dead human bodies, or any rule of the board regulating the professions of mortuary science or funeral directing, or the operation of a mortuary.

(4) If the licensee has participated in any scheme in the nature of a burial association or burial certificate plan which does not properly protect the rights of the public, or where there is any element of fraud, or where there is contained any agreement or provision that deprives heirs, next of kin, or any other authorized person freedom of choice as to the services or merchandise used in connection with a funeral, or the freedom of choice as to which funeral directors or morticians shall be employed.

History: En. Sec. 14, Ch. 41, L. 1963.

66-2715. Hearing and notice—revocation and suspension of licenses. No action to suspend, revoke, or cancel a license shall be taken by the board until the accused has been furnished, at least thirty (30) days prior to the date of the hearing, with a statement of the charges against him and notice of the time and place of hearing the charges. If, upon the hearing, the board finds the charges true, it may revoke or suspend the license of the accused person. A stenographic report of each proceeding to revoke or suspend the license shall be made at the expense of the board and a

transcript kept in its files. A copy of the transcript shall be furnished to the person so charged and accused.

History: En. Sec. 15, Ch. 41, L. 1963.

66-2716. Appeal. A person who has been refused a license or whose license has been revoked or suspended, may file with the secretary of the board, within thirty (30) days after the decision of the board, a written notice of appeal to any district court of the state of Montana. The court is limited in its proceedings to a determination of whether the action of the board was in accord or consistent with this act or the constitution of this state, or whether the action of the board was arbitrary or an abuse of discretion. When a notice of appeal is filed the secretary of the board shall transmit to the clerk of the court the record of the board's proceedings. The judgment of a district court of the state of Montana, may, in the manner provided for appeal of civil action, be reviewed upon proceedings on appeal in the supreme court.

History: En. Sec. 16, Ch. 41, L. 1963.

66-2717. Penalty provision. A person who violates this act is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 41, L. 1963.

CHAPTER 28—ELECTRICAL SAFETY LAW

Section 66-2801.	Short title.
66-2802.	Purpose.
66-2803.	Definitions.
66-2804.	State electrical board.
66-2805.	Oath—meetings—powers.
66-2806.	Electrician must have license.
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66-2814.	Fees.
66-2815.	Examination fees.
66-2816.	Licensing of those presently qualified.
66-2817.	Apprentices—rules and regulations—record kept by state board.
66-2819.	Disposition of fees.
66-2820.	Violations—penalty.

66-2801. Short title. This act is to be known and referred to as the Electrical Safety Law.

History: En. Sec. 1, Ch. 148, L. 1965.

Title of Act

An act defining master electricians, journeyman electricians, and electrical contractors, and setting forth the qualifications, examination and licensing of each; adopting a code of standards; providing for certain exceptions; establishing a state

electrical board; providing for appointment of state electrical inspectors; providing for the issuance of licenses and temporary permits and inspection fees; providing for license examination; providing for disposition of fees; providing a penalty; repealing sections 16-1180 and 16-1181; and providing an effective date.

66-2802. Purpose. (1) The purpose of this act is to protect the health and safety of the people of Montana from the danger of elec-

trically caused shocks, fires and explosions and to protect property from the hazard of electrically caused fires and explosions, and to establish a procedure for determining where and by whom electrical installations are to be made and to assure the public that persons making electrical installations are qualified, and that the electrical installations and electrical products made and sold within this state meet minimum safety standards. From and after the taking effect of this act, all installations in the state of Montana of wires and equipment to convey electric current and installations of apparatus to be operated by such current, except as hereinafter provided, shall be made substantially in accord with the National Electrical Code, as approved by the American standards association, relating to such work as far as the same covers both fire and personal injury hazards, and as the National Electrical Code shall be amended, revised, compiled and published from time to time and as such amendments or revisions are adopted by the board.

(2) Rules and standards relating to buildings and equipment covered by the state or a municipal building code are not effective until approved by the state building code council and filed with the secretary of state.

History: En. Sec. 2, Ch. 148, L. 1965; Amendments
amd. Sec. 19, Ch. 366, L. 1969.

The 1969 amendment designated the first paragraph as subsection (1) and added subsection (2).

66-2803. Definitions. (a) The term "master electrician" means a person having the necessary qualifications, training, experience and technical knowledge to properly plan, lay out and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes in accordance with standard rules and regulations governing such work.

(b) The term "journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes, in accordance with standard rules and regulations governing such work.

(c) The term "electrical contractor" means any person, firm, co-partnership, corporation, association, or combination thereof, who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations shall not be classed as an electrical contractor.

History: En. Sec. 3, Ch. 148, L. 1965.

66-2804. State electrical board. There is hereby established a state electrical board which shall consist of three members, appointed by the governor, with the consent of the senate, who shall be residents of the state of Montana. One of said members shall be an electrical contractor, one shall be a journeyman electrician, and one shall be appointed from the public at large. The original members of the board shall be appointed

within twenty (20) days after the effective date of this act for one (1), two (2), and three (3) years, respectively, as determined by the governor, and all appointments thereafter shall be for a term of three (3) years. Any vacancy occurring in the membership of the board shall be filled by the governor by appointment for the unexpired term of such member. Each member of the board shall receive the actual and necessary expenses incurred in the performance of his duties, all to be paid out of the electricians' fund herein created.

History: En. Sec. 4, Ch. 148, L. 1965.

66-2805. Oath—meetings—powers. (a) Each member of the board, before entering on the discharge of his duties, and within thirty (30) days from the effective date of his appointment, shall subscribe to an oath for the faithful performance of duty before any officer authorized to administer oaths in this state and shall file the same with the secretary of state.

(b) The board shall, within thirty (30) days after July 1, 1965, and annually thereafter in the month of July, elect from the membership thereof a president, vice-president and a secretary-treasurer. The board shall meet quarterly and at such other times as it shall deem necessary.

(c) The board is authorized and empowered to:

(i) Prescribe, amend and enforce rules and regulations consistent with this act for the administration of this act and to effectuate the purposes thereof, and for the licensing of electrical contractors and the examination and licensing of journeymen electricians, and to make inspections of electrical installations, and to issue inspection tags covering such installations, and to establish and charge a reasonable and uniform schedule of fees therefor, which shall not exceed the expenses of providing such inspection service. Individuals, firms, co-operatives, corporations, or municipalities selling electricity hereinafter known as a power supplier, shall not connect with or energize any electrical installation, coming under the provisions of this act, unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag, issued by the board except in cities or towns that have no inspection facilities, covering the installation to be energized. Immediately after an installation has been energized, the power supplier shall deliver to the board or its authorized agent, the inspection tag covering such installation except in cities or towns having no inspection facilities. It shall be unlawful for any person, partnership, company, firm, association or corporation other than a power supplier, to energize any electrical installation coming under the provisions of this act unless an application for an electrical inspection tag, covering such installation, together with the inspection fee herein provided, has been forwarded to the board except in cities or towns having no inspection facilities:

(ii) Adopt a seal, and the secretary shall have the care and custody thereof;

(iii) Examine, license, and renew the licenses of duly qualified applicants for electrical contractor, journeyman electrician or master electrician as provided in this article;

(iv) Cause the prosecution and enjoinder of all persons violating this article and incur necessary expenses therefor;

(v) Employ such technical, clerical, or other assistance as is necessary for the proper performance of its work.

History: En. Sec. 5, Ch. 148, L. 1965.

66-2806. Electrician must have license. No person shall engage in or work at the business, trade, or calling of electrical contractor, journeyman electrician or master electrician in this state, until he shall have received from the state electrical board and [a] license or permit to work as an electrical contractor, journeyman electrician or master electrician.

History: En. Sec. 6, Ch. 148, L. 1965.

Compiler's Note

The compiler has inserted the bracketed word "a."

66-2807. License requirements. (a) An applicant for a master electrician's license shall furnish written evidence that he is a graduate electrical engineer of an accredited college or university and has one year of practical electrical experience, or that he is a graduate of an electrical trade school and has at least four years of practical experience in electrical work, or that he has had at least five years' practical experience in planning, laying out, supervising, or installing wiring, apparatus, or equipment for electrical light, heat, and power. Applicants for license as a master electrician shall file an application on forms prepared and furnished by the state electrical board, together with the examination fee. The board shall, not less than thirty days prior to a scheduled written examination, notify each applicant that the evidence submitted with his application is sufficient to qualify him to take such written examination or that such evidence is insufficient and is rejected and in the event the application is rejected the board shall set forth the reasons therefor in the notice to the applicant, and shall forthwith return such applicant's examination fee. The place of examinations shall be designated in advance by the board and examinations shall be held not less often than once a year and at such other times as, in the opinion of the board, the number of applicants warrants.

(b) The written examination shall consist of at least thirty (30) questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(i) The National Electrical Code;

(ii) Cost estimating for electrical installments;

(iii) Procurement and handling of materials needed for electrical installations and repair;

(iv) Reading of blueprints for electrical work;

(v) Drafting and layout of electrical circuits;

(vi) Knowledge of practical electrical theory.

(c) An applicant for a journeyman electrician's license shall furnish written evidence that he has had at least four (4) years apprenticeship in the electrical trade or four (4) years practical experience in the wiring for, installing, and repairing electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant shall

be made and given as provided for in the case of master electricians' licenses

(d) The written examination for a journeyman's license shall consist of at least thirty (30) questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

- (i) The Ohms law;
- (ii) The National Electrical Code;
- (iii) Layout and practical installation of electrical circuits.

(e) To insure impartiality, the examination shall be by numbers which shall be drawn by lot, and no paper shall be marked in the name of any applicant but shall be anonymously graded by the board. The examination passing grade shall be seventy-five per cent (75 %) of perfection. If it shall be determined that the applicant has passed the examination, the secretary, upon payment by the applicant of the fee, shall issue to the applicant a license which shall authorize him to engage in the business, trade, or calling of a journeyman electrician or master electrician. Each such original license shall by its terms expire on the fifteenth day of July which is at least one (1) year but not more than two (2) years subsequent to the date of issuance.

(f) All licenses of journeyman electricians or master electricians, unless such licenses have been suspended or revoked by the board, shall be renewed for a period of one (1) year by the board upon application for such renewal being made to the board prior to the fifteenth day of July of the year in which the prior license expired and upon the payment of an annual renewal fee. If application for renewal is not made prior to said fifteenth day of July, an additional fee of five dollars (\$5) shall be paid on account of such delinquency in renewal; but all such applications for renewal must be made prior to the fifteenth day of August of that year, otherwise the license shall be forfeited, and such applicant shall be required to pass the examination and pay the fees required of applicants for original licenses.

History: En. Sec. 7, Ch. 148, L. 1965.

66-2808. Unauthorized use of title. No person, firm, partnership, corporation or association shall assume or use the title or designation of licensed master electrician or licensed journeyman electrician unless qualified and licensed under this act.

History: En. Sec. 8, Ch. 148, L. 1965.

66-2809. License to nonresidents—reciprocity. To the extent that other states which provide for the licensing of electricians provide for similar action, the state electrical board may grant licenses to electricians licensed by such other states, upon payment by the applicant of the required fee and upon furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination.

History: En. Sec. 9, Ch. 148, L. 1965.

66-2810. Temporary permits. The state electrical board may issue temporary permits to engage in the work of a master electrician or journeyman electrician to any applicant who furnishes evidence satisfactory to the board that he has the required experience to qualify for the examination provided in this article and who pays the fee. Temporary permits shall continue in effect only until the next examination is given and may be revoked by the board at any time. If the applicant is granted a license, any fee paid for the temporary permit shall be applied to the fee required for a license.

History: En. Sec. 10, Ch. 148, L. 1965.

66-2811. License without written examination. The state electrical board may issue a license as a master electrician or journeyman electrician to any applicant without written examination upon satisfactory proof that said applicant has the qualifications to apply for a license under this act and is the holder of a valid license issued by any city or other political subdivision of the state providing for the examination and licensing of electricians.

History: En. Sec. 11, Ch. 148, L. 1965.

66-2812. Exemptions. (a) Nothing in this act shall be deemed to apply to the installation or maintenance of communication circuits, wires and apparatus; nor to any electrical public utility, or its employees, in the installation and maintenance of electrical wiring, circuits, apparatus and equipment by or for such public utility, or comprising a part of its plants, lines or system. The licensing provisions of this act shall not apply to persons making electrical installations on their own property or to regularly employed maintenance electricians working on the premises of their employer.

(b) Nothing in the article shall be construed to require any individual to hold a license before doing electrical work on his own property.

(c) Any person may work as an apprentice to a licensed electrician but shall not do any electrical wiring for or installation of electrical apparatus or equipment for light, heat, or power, except with and under the direct supervision of a licensed electrician.

(d) An individual, firm, copartnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, copartnership, or corporation is under the direction and control of a licensed master electrician.

(e) Any person who plugs in an electrical appliance where approved electrical outlet is already installed shall not be considered as an installer.

(f) No provisions of this article shall in any manner interfere with, hamper, preclude or prohibit any vendor of any electrical appliance, from selling, delivering and connecting any electrical appliance, if the connection of said appliance does not necessitate the installation of electrical wiring of the structure where said appliance is connected.

History: En. Sec. 12, Ch. 148, L. 1965.

66-2813. Appeals. Any person aggrieved by a decision of the board, and affected thereby, shall be entitled to judicial review by filing in

the district court of the county of his residence or in the district court of the county of Lewis and Clark, within ninety (90) days after the decision of the board, an action requesting such review. Review shall be by trial as in other civil cases, de novo.

History: En. Sec. 13, Ch. 148, L. 1965.

66-2814. Fees. Each electrical contractor shall, on or before the first day of July of each year, file with the state electrical board an application in writing for each firm operated by him in Montana to obtain a license therefor. No license shall be issued until the applicant meets the requirements and has paid to the state electrical board a license fee of seventy-five dollars (\$75) for each firm operated by him. All licenses shall bear the date of issue and shall expire on the first day of July next following the date of issue. Every electrical contractor licensed under the provisions of this act shall be entitled to have his license renewed for the ensuing year, upon the expiration of his license, by the payment to the state electrical board of a fee of seventy-five dollars (\$75) on or before the date of expiration of such license.

History: En. Sec. 14, Ch. 148, L. 1965.

66-2815. Examination fees. (a) All master electricians not being electrical contractors and all journeyman electricians performing work or intending to perform work for hire of installing electric wiring or equipment to convey electric current, or installing apparatus to be operated by such current, shall, within sixty (60) days after the first day of July, 1965, make application for a license to the state electrical board. The application shall be on a form furnished by the state electrical board and be accompanied by an examination fee of ten dollars (\$10). The forms shall state the applicant's full name, his address, the extent of his experience, and such other information as may be required by the state electrical board. Upon applicant's complying with the rules and requirements promulgated by the state electrical board and, being qualified, successfully completes the examination, he shall pay to the state electrical board an annual license fee of twenty-five dollars (\$25) for a master electrician's license; ten dollars (\$10) for a journeyman electrician's license, and upon receipt thereof, he shall be issued the proper license by said board. Any person serving a four (4) year electrician apprenticeship under the supervision of a licensed electrician shall be exempt from the licensing provision of this paragraph during training. Provided, however, that credit for the time spent in any electrical school shall be given to the master electrician, journeyman electrician or apprentice for the time spent in said classes, up to a total of two (2) years on the aforementioned four (4) year requirement.

History: En. Sec. 15, Ch. 148, L. 1965.

66-2816. Licensing of those presently qualified. Montana resident electricians who, prior to July 1, 1967 have had at least four (4) years practical experience in installing electric wires and equipment covered by the National Electrical Code shall not be required to take the examination, but shall be issued a license by the board upon pay-

ment of the proper license fee and furnishing of proof satisfactory to the board of such four (4) years' experience; provided, such application is made within sixty (60) days after July 1, 1967. All Montana resident contractors doing business on the effective date of this act shall be qualified to receive said license if application is made within the time provided herein.

History: En. Sec. 16, Ch. 148, L. 1965; amd. Sec. 1, Ch. 199, L. 1967. • after "days after July 1" at the end of the first sentence.

Amendments

The 1967 amendment substituted "July 1, 1967" for "the effective date of this act" after "prior to" at the beginning of this section; and substituted "1967" for "1965"

Effective Date

Section 2 of Ch. 199, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

66-2817. Apprentices—rules and regulations—record kept by state board. Nothing in this act shall prohibit any person from working as an apprentice in said trade of electrician with an electrician duly licensed by said board as herein provided for, and under such rules and regulations as may be prescribed from time to time by the state electrical board; provided, the name and residence of each apprentice, and the names and residences of their employers, shall be duly filed with said board, and a record shall be kept by said board, showing the names and residences of such apprentices.

History: En. Sec. 17, Ch. 148, L. 1965.

66-2818. Repealed.

Repeal

Section 66-2818 (Sec. 18, Ch. 148, L. 1965), relating to municipal ordinances for

electrical standards, was repealed by Sec. 27, Ch. 366, Laws 1969.

66-2819. Disposition of fees. All moneys received under this act shall be deposited with the state treasurer and credited to an account to be designated by the state treasurer as the proper account for the fund hereby created. No money shall be paid out of said fund except upon voucher drawn against said fund, signed and certified to by the secretary of the board. All funds so credited shall be available to the state electrical board for the payment of salaries and expenses incurred by it in the performance of its duties under this act.

History: En. Sec. 19, Ch. 148, L. 1965.

66-2820. Violations—penalty. Any person or corporation violating any provision of this act shall upon conviction thereof, if a person, be punished by a fine not more than five hundred dollars (\$500), or by imprisonment for a term not to exceed six (6) months, or by revocation of his license or by such fine, imprisonment and revocation, in the discretion of the court; and if a corporation, be punished by a fine of not more than one thousand dollars (\$1,000). Any officer or agent of a corporation, or member or agent of a copartnership or association, who shall personally participate in or be accessory to any violation of this act by such copartnership, association, corporation, shall be subject to the penalties herein prescribed for individuals.

History: En. Sec. 20, Ch. 148, L. 1965.

Effective Date

Repealing Clause

Section 21 of Ch. 148, Laws 1965 repealed sections 16-1180 and 16-1181 and all acts and parts of acts in conflict with Ch. 148.

Section 22 of Ch. 148, Laws 1965 read "This act shall be in full force and effect from and after the 1st day of July, 1965."

CHAPTER 29—MASSEURS—REGULATION AND LICENSING

- Section 66-2901. Purpose of act.
 66-2902. Definitions.
 66-2903. State board of massage examiners—qualifications and appointment.
 66-2904. Organization of board—meetings—powers and duties.
 66-2905. Practicing without a license—license without examination.
 66-2906. Application and fees for license.
 66-2907. Examinations.
 66-2908. Refusal or revocation of license.
 66-2909. Renewal of license.
 66-2910. Disposition of fees—receipts and disbursements.
 66-2911. Bond of treasurer—dismissal of members of the board.
 66-2912. Admission to practice of persons from other states.
 66-2913. Penalty for violation of this act.
 66-2914. Exemptions.

66-2901. Purpose of act. It is hereby declared, as a matter of legislative policy in the state of Montana, that the occupation of masseur and masseuse should be regulated and licensed for the protection of the interest, health, and welfare of the people of Montana; that it is necessary to authorize and provide authority to a state board to properly protect the patron public against improper, unauthorized and unqualified masseurs and masseuses and to provide standards of sanitation and practice.

History: En. Sec. 1, Ch. 302, L. 1967.

Title of Act

An act providing for the regulation and licensing of the occupation of massage; creating a board, providing qualifications,

powers, duties, and compensation; providing for examination and licensing, disposition of receipts and disbursements, and a penalty for violation, and other requirements.

66-2902. Definitions. a. The term masseur shall include all persons engaged in the occupation of massage and the masculine gender includes the feminine "masseuse."

b. Massage shall mean the trained ability of body massage by hands for the purpose of body massage, the use of oil rubs, salt glows, hot and cold packs, tub, shower or cabinet baths; which includes the application to the patron by the operator's hands by variations of touch, stroking, friction, kneading, vibration, percussion, and gymnastics.

c. Massage establishment as used in this act shall mean any place wherein all or any or more of the above defined procedures and methods are administered or used.

d. The term board as used in this act shall mean the Montana board of massage examiners.

History: En. Sec. 2, Ch. 302, L. 1967.

66-2903. State board of massage examiners—qualifications and appointment. There is hereby created and established a board to be known as the state board of massage examiners, and said board shall be composed of

three (3) practicing masseurs of integrity and ability, who shall be residents of the state of Montana, and who shall have been engaged in the occupation of massage continuously in the state of Montana for a period of at least one (1) year. The governor of the state of Montana shall appoint three (3) masseurs, who shall possess the necessary qualifications, to constitute the members of said board, the term of office of one (1) to expire in one (1) year, one (1) in two (2) years, and one (1) in three (3) years from the date of appointment. Annually thereafter, the governor shall appoint one (1) licensed masseur engaged in such occupation and possessed of the qualifications herein set forth, to serve for a period of three (3) years, and shall fill all vacancies in said board caused by death or otherwise as soon as practicable.

History: En. Sec. 3, Ch. 302, L. 1967.

66-2904. Organization of board—meetings—powers and duties. The board of massage examiners shall convene within thirty (30) days after their appointment and elect, and thereafter annually elect, a president, a vice-president, and a secretary-treasurer from their membership.

The board shall hold a regular meeting on the 2nd Friday of January in each year, at the city of Helena, Montana, and shall hold special meetings at such times and places as the board, or a majority of the membership thereof, may designate; provided, that not more than four (4) meetings shall be held in any one (1) year. A majority of the board shall constitute a quorum.

The board shall have authority to administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board. It shall adopt a seal, which shall be affixed to all licenses issued by them, and shall from time to time adopt such rules and regulations as they deem proper and necessary for the performance of their duties, and they shall adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this law, which shall be without prejudice, partiality, or discrimination as to the different schools of massage training. The secretary of said board shall keep a record of the proceedings of the board, which shall at all times be open to public inspection.

A license to engage as a masseur within this state shall be issued to the individual members of said board at the first meeting of said board upon payment of the regular fee as provided for in this act.

History: En. Sec. 4, Ch. 302, L. 1967.

66-2905. Practicing without a license—license without examination. It shall be unlawful for any person to engage in the occupation of massage in this state without first obtaining a license as provided in this act. All persons engaged in the occupation of massage within this state for three (3) months prior to the passage of this law who have completed a course in massage and shall accompany said application with satisfactory evidence of good character and reputation may be licensed without further examination.

When application for examination for license is regularly filed with the board, as provided in this act, the board may issue to the applicant a temporary permit to engage in the occupation of massage, which certificate shall be good until the next meeting of the board.

History: En. Sec. 5, Ch. 302, L. 1967.

66-2906. Application and fees for license. Any person wishing to engage in the occupation of a masseur in this state after August 1, 1967, except those licensed under section 5 [66-2905] of this act, shall make application to said board of massage examiners through the secretary-treasurer thereof, and upon such form and such manner as may be prescribed and directed by the board, at least fifteen (15) days prior to any meeting of said board. Each applicant shall hold a diploma or credentials issued by a recognized, approved school of massage or like institution, certifying not less than one thousand (1,000) hours of study satisfactory to said school. Application shall be made in writing and shall be sworn to by some officer authorized to administer oaths, and shall recite the history of applicant's educational qualifications, how long he has studied massage, from what school he holds a certificate, and the length of time he has engaged in the occupation of massage, accompanying the same with proof thereof by a diploma or certificate and shall accompany said application with satisfactory evidence of good character and reputation.

There shall be paid to the secretary-treasurer of the state board of massage examiners, by each applicant for a license, a fee of thirty-five dollars (\$35) which shall accompany the application. Any applicant failing to pass said requirements shall be entitled within six (6) months to a re-examination upon payment of an additional fee of ten dollars (\$10) but upon a third failure may not reapply.

History: En. Sec. 6, Ch. 302, L. 1967.

66-2907. Examinations. Examinations for licenses to engage in the occupation of massage shall be made by the board according to the method deemed by it to be the most practicable and expeditious to test the applicant's qualifications.

All examinations shall be made in writing, and in addition each applicant shall pass a reasonable demonstrative and oral examination, conducted by and under the supervision and direction of said board. Minimum requirements shall be a general average in said examination of seventy-five per cent (75%) in all subjects involved and not less than fifty per cent (50%) in any one (1) subject. In addition to such subjects as may be designated by the board, the examination shall include principles of sanitation and hygiene.

History: En. Sec. 7, Ch. 302, L. 1967.

66-2908. Refusal or revocation of license. The state board of massage examiners may, after due hearing, refuse to grant, revoke or renew any license provided for in this act to a person, otherwise qualified, who obtained said license by fraudulent representation, for incompetency in

practice, for use of untruthful or improbable statements to patrons or in his advertisements, for habitual intoxication or for unprofessional and immoral conduct, but said board may reissue a license after a lapse of not less than six (6) months, if in its judgment such act or acts and/or conditions of disqualification shall have been remedied. It shall be a violation of this act for any person engaged in the occupation of a masseur to advertise or assert as a licensee under this act that they diagnose or treat any disease, injury or illness.

History: En. Sec. 8, Ch. 302, L. 1967.

66-2909. Renewal of license. Each license shall expire on the last day of December in each year and shall be renewed then or thereafter, by the board, upon payment of a renewal fee of not less than ten dollars (\$10) or more than twenty-five dollars (\$25) as set by the state board of massage examiners.

History: En. Sec. 9, Ch. 302, L. 1967.

66-2910. Disposition of fees—receipts and disbursements. All examination and renewal fees received by the state board of massage examiners under this act shall be paid to the secretary-treasurer of said board, who shall at the end of each month deposit the same with the state treasurer, and the state treasurer shall place all money so received in an account in the earmarked revenue fund to the credit of the state board of massage examiners and shall pay the same out in warrants drawn by the state auditor, upon approved vouchers issued and signed by the president and secretary-treasurer of said board. All money so received and placed in said fund may be used by the state board of massage examiners in defraying their expenses in carrying out the provisions of this act.

The secretary-treasurer shall keep a true and accurate account of all funds received and all vouchers issued by the board; and on the first day of December of each year, shall file with the governor of the state a report of all receipts and disbursements and the proceedings of said board for the fiscal year.

The members of said board shall receive a per diem of fifteen dollars (\$15) for each day during which they shall be actually engaged in the discharge of their duties, and mileage at the rate of ten cents (10¢) per mile for each mile necessarily traveled in going to and from any meeting of said board.

Per diem and mileage and all other expenses necessarily connected with said board shall be paid only out of the earmarked revenue fund of the state board of massage examiners.

History: En. Sec. 10, Ch. 302, L. 1967.

66-2911. Bond of treasurer—dismissal of members of the board. The treasurer of said board shall give bond in such sum and with such sureties as the board may deem proper. Upon sufficient proof to the governor of the inability or misconduct of a member of the board, said member shall be dismissed, and the governor shall appoint as his successor some licensed masseur of this state.

History: En. Sec. 11, Ch. 302, L. 1967.

66-2912. Admission to practice of persons from other states. Persons licensed to engage in the occupation of a masseur under the laws of any other state having equal requirements to this act, may, in the discretion of the board, be issued a license to engage in the occupation of a masseur in this state without examination, upon payment of the fee of thirty-five dollars (\$35) as herein provided.

History: En. Sec. 12, Ch. 302, L. 1967.

66-2913. Penalty for violation of this act. Any person who shall engage in the practice of body massage as a masseur, or shall accept compensation for performing body massage as a masseur, without first having complied with the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than two hundred dollars (\$200) or more than five hundred dollars (\$500), or by imprisonment in the county jail for not less than thirty (30) days or more than six (6) months, or by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 13, Ch. 302, L. 1967.

66-2914. Exemptions. The following classes of persons are exempt from this act:

1. Persons authorized by the laws of this state to practice medicine, surgery, osteopathy, chiropractic or chiropody.
2. Persons who are registered or licensed under the laws of this state as nurses, practical nurses, physical therapists, barbers or cosmetologists.
3. Schools, Y.M.C.A. clubs, athletic clubs, and similar organizations who furnish massage to their players and members.

History: En. Sec. 14, Ch. 302, L. 1967.

CHAPTER 30—HEARING AID DISPENSERS

- Section 66-3001. Declaration of policy.
- 66-3002. Board of hearing aid dispensers created.
- 66-3003. Definitions.
- 66-3004. Composition of board—selection of members—vacancies—officers—reappointment—alternate member.
- 66-3005. Powers and duties of board.
- 66-3006. Meeting place and time—quorum.
- 66-3007. License required to dispense and fit hearing aids.
- 66-3008. Bill of sale must be given—contents—examination by otolaryngologist—examination by dispenser not medical opinion.
- 66-3009. Exclusions.
- 66-3010. Applicant for license must pay fee and show good character, requisite education and freedom from disease.
- 66-3011. Written and practical tests—date of examinations.
- 66-3012. Areas covered by examination.
- 66-3013. Practitioners active upon effective date to be given license.
- 66-3014. Temporary license—qualifications—fee—supervision by licensee—not to be renewed, except for good cause, if next examination not taken—renewal upon failing examination—no more than two renewals—renewal fee.
- 66-3015. Permanent place of business in state necessary—exception—records—notice.

- 66-3016. Annual renewal fee—grace period—renewal after expiration of grace period—re-examination not necessary within three years of failure to renew.
- 66-3017. Revocation or suspension for cause.
- 66-3018. Sale of dispensing business.
- 66-3019. Licensing of applicants licensed in other jurisdictions—examination unnecessary—fee.
- 66-3020. Deposit of fees in earmarked revenue fund—appropriations—operating funds—per diem and travel expenses.
- 66-3021. Practicing without a license a misdemeanor—penalty—injunctive enforcement authorized.
- 66-3022. Licensee entitled to disciplinary hearing if duly requested—right to appeal.
- 66-3023. Petition for district court review—time limit—service of petition—certification of questions of law—evidence outside record—exceptions unnecessary—record of board decisions open to inspection.

66-3001. Declaration of policy. The selling and fitting of hearing aids is hereby declared to affect the public health and welfare and is subject to regulation and control in the public interest. This act shall be liberally construed to carry out the objects and purposes hereinafter described in accordance with this declaration of policy.

History: En. Sec. 1, Ch. 204, L. 1969.

Title of Act

An act to establish the Montana board of hearing aid dispensers for the licensing

of dealers and persons engaged in the sale and fitting of hearing aids; to provide for the regulation of selling and fitting hearing aids to the public; and to provide for penalties for violation of the act.

66-3002. Board of hearing aid dispensers created. There is hereby created a board to be known as "Montana Board of Hearing Aid Dispensers."

History: En. Sec. 2, Ch. 204, L. 1969.

66-3003. Definitions. As used in this act, unless the context clearly indicates otherwise;

- (1) "Board" means the Montana board of hearing aid dispensers.
- (2) "License" means a regular or temporary license.
- (3) "Hearing aid" means any instrument or device designed for or represented as aiding or improving defective human hearing and any parts, attachments or accessories of such an instrument or device.
- (4) "Practice of dispensing and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, or adaption, or sale of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear, but will not include batteries, cords, or accessories.

History: En. Sec. 3, Ch. 204, L. 1969.

66-3004. Composition of board—selection of members—vacancies—officers—reappointment—alternate member. (1) The board shall consist of five (5) members. Three (3) of the members shall be qualified dispensers and fitters of hearing aids for at least five (5) years prior

to appointment to the board, one (1) member of the board shall hold, or be eligible for, a certificate of qualification for the American Board of Otolaryngology, and one (1) member of the board shall hold, or be eligible for, a certificate of clinical competence in audiology from the American Speech and Hearing Association.

(2) The governor shall appoint one (1) member each from lists of nominees submitted to him by the Montana Academy of Oto-ophthalmology, and the Montana Speech and Hearing Association who shall serve for four (4) and five (5) years respectively. He shall choose three (3) members from a list of nominees submitted to him by the Montana Hearing Aid Dealers' Society; initially one (1) member from this list shall serve for three (3) years, one (1) member for two (2) years, and one (1) member for one (1) year. Each successive board member shall be appointed for a term of three (3) years.

(3) If a vacancy occurs on the board, the governor shall appoint a person to serve the unexpired term from the same list that the member was chosen whose term was not completed.

(4) Members of the board shall annually designate one (1) member to serve as chairman and another member to serve as secretary-treasurer.

(5) No member of the board may be reappointed within one (1) year after the expiration of his second consecutive full term of office.

(6) The governor shall appoint one (1) alternate board member from each of the three lists to serve when a regular board member cannot attend a scheduled meeting.

History: En. Sec. 4, Ch. 204, L. 1969.

66-3005. Powers and duties of board. The powers and duties of the board are to:

(1) authorize all disbursements necessary to carry out the provisions of this act;

(2) supervise and administer qualifying examinations to test the proficiency and knowledge of applicants for a license;

(3) license persons who apply to the board and who are qualified to practice the fitting of hearing aids;

(4) issue and renew licenses pursuant to this act;

(5) establish a procedure to act as a grievance board to receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this act, or their agents whether licensed or not;

(6) suspend or revoke licenses pursuant to this act;

(7) appoint representatives to conduct or supervise the examination of applicants for license;

(8) designate the time and place for examining applicants for license;

(9) make and publish rules not inconsistent with the laws of this state which are necessary to carry out the provisions of this act;

(10) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;

(11) prepare all examinations required by the act;

(12) employ and fix the compensation of personnel necessary to carry out the provisions of this act;

(13) to initiate legal action to enjoin from operation, any person or corporation engaged in the sale and fitting of hearing aids in Montana, who is not licensed under the provisions of this act.

History: En. Sec. 5, Ch. 204, L. 1969.

66-3006. Meeting place and time—quorum. The board shall meet at least once each year at a place and time determined by the chairman and at such other times and places specified by the chairman to carry out the purposes of this act. Three (3) members, including either the otolaryngologist or the audiologist, shall constitute a quorum.

History: En. Sec. 6, Ch. 204, L. 1969.

66-3007. License required to dispense and fit hearing aids. No person shall engage in the sale or practice of dispensing and fitting hearing aids or display a sign or in any other way advertise or hold himself out as a person who practices the dispensing and fitting of hearing aids unless he holds a current regular or temporary license issued by the board.

History: En. Sec. 7, Ch. 204, L. 1969.

66-3008. Bill of sale must be given—contents—examination by otolaryngologist—examination by dispenser not medical opinion. (1) Any person who practices the fitting or dispensing of hearing aids shall deliver to each person supplied with a hearing aid, by him or at his order or direction, a bill of sale which shall contain the seller's signature, and show the name and address of his regular place of business and the number of his license together with a description of the make and type of the hearing aid furnished and the amount charged, with terms of guarantee, if any. The bill of sale shall also reveal the condition of the hearing device and whether it is new, used, or reconditioned.

(2) Any person practicing the fitting and sale of hearing aids shall, when dealing with a person eighteen (18) years of age and under or when the aid is to be purchased with state funds ascertain if the person has been examined by an otolaryngologist within ninety (90) days prior to the fitting and shall obtain his recommendations. If such not be the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt.

(3) Such receipt must bear, in no smaller type than the largest used in the body portion, the following: Any examination(s) or representation(s) made by a licensed hearing aid dealer and fitter in connection with the fitting and selling of this hearing aid(s) is not an examination, diagnosis, or prescription by a person licensed to practice medicine in

this state and therefore, must not be regarded as medical opinion or advice.

History: En. Sec. 8, Ch. 204, L. 1969.

66-3009. Exclusions. (1) This act does not apply to a person who is a physician licensed to practice by the board of medical examiners of the state of Montana.

(2) This act does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education, or part of a program conducted by a public agency or by a charitable or non-profit organization which is primarily supported by voluntary contributions, unless they sell hearing aids.

History: En. Sec. 9, Ch. 204, L. 1969.

66-3010. Applicant for license must pay fee and show good character, requisite education and freedom from disease. An applicant for a license shall pay a fee of fifty dollars (\$50) and shall show to the satisfaction of the board that he:

(1) is a person of good moral character;

(2) has an education equivalent to a four (4) year course in an accredited high school, or has continuously engaged in the practice of fitting and dispensing hearing aids during the three (3) years preceding the date of application;

(3) is free of contagious or infectious disease.

History: En. Sec. 10, Ch. 204, L. 1969.

66-3011. Written and practical tests — date of examinations. (1) An applicant for a license who is notified by the board that he has fulfilled the requirements of section 9 [66-3009] of this act shall appear at a time, place, and before such persons as the board may designate, to be examined by written and practical tests in order to demonstrate that he is qualified to practice the fitting of hearing aids.

(2) The board shall give examinations as required to permit applicants to be examined within thirty (30) days following the board's approval of application for examination. Examination may be delayed upon due notice to the board, within the provisions of section 11 [this section].

History: En. Sec. 11, Ch. 204, L. 1969.

66-3012. Areas covered by examination. The examination provided in subsection (1) of section 11 [66-3011] of this act shall consist of a test of knowledge and practical tests of proficiency where they apply in the following areas as they pertain to the fitting of hearing aids.

(1) Acoustics:

General Principles

The Decibel

Hearing and Speech

- (2) The Human Ear:
 - External
 - Middle
 - Inner
- (3) The Hearing Process:
- (4) Disorders of Hearing:
 - Conductive
 - Sensori-neural
 - Central
 - Psychogenic
- (5) Audiometry:
 - Pure Tone
 - Theory
 - Procedures
 - Speech
- (6) The Hearing Analysis:
 - Audiogram
 - Auditory Area
- (7) Hearing Aids:
 - History
 - Characteristics
 - Components
- (8) Practical use of the otoscope:
 - Earmold
 - Impression
- (9) Fittings:
 - Hearing Aid
 - Earmold
- (10) Delivery and Checkup:
- (11) or any change as deemed necessary by the board.

History: En. Sec. 12, Ch. 204, L. 1969.

66-3013. Practitioners active upon effective date to be given license. Every person engaged in the practice of fitting and dispensing of hearing aids upon the effective date of this act shall be registered and given a license by the board if he shall present satisfactory evidence to the board that he has been actively engaged in the practice of fitting and dispensing hearing aids in the state of Montana.

History: En. Sec. 13, Ch. 204, L. 1969.

Compiler's Notes

This act became effective March 4, 1969.

66-3014. Temporary license — qualifications — fee — supervision by licensee—not to be renewed, except for good cause, if next examination not taken—renewal upon failing examination—no more than two renewals—renewal fee. (1) An applicant who fulfills the requirements of section 10 [66-3010] but does not fulfill the requirements of section 13 [66-3013] of this act and who has not previously applied to take the examination provided under section 11 [66-3011] of this act may apply to the board for a temporary license.

(2) Upon receiving an application provided under subsection (1) of this section, accompanied by a fee of twenty-five dollars (\$25), the board shall issue a temporary license which shall entitle the applicant to practice the fitting and dispensing of hearing aids for a period ending thirty (30) days after the conclusion of the next examination given after the date of issue.

(3) No temporary license shall be issued by the board unless the applicant shows to the satisfaction of the board that he is, or will be, supervised and trained by a person who holds a valid license issued under this act.

(4) If a person who holds a temporary license does not take the next examination given after the date of issue, the temporary license shall not be renewed, except for a good cause shown to the satisfaction of the board.

(5) If a person who holds a temporary license takes and fails to pass the next examination given after the date of issue, the board may renew the temporary license for a period ending thirty (30) days after the results of the next examination given after the dates of renewal are announced. In no event shall more than two (2) renewals be permitted. The fee for renewal shall be thirty dollars (\$30).

History: En. Sec. 14, Ch. 204, L. 1969.

66-3015. Permanent place of business in state necessary—exception—records—notice. (1) A person who obtains a license to dispense hearing aids as a business must have a permanent place of business in the state of Montana that will be opened to serve the public, having the necessary testing, fitting and hearing aid accessories needed by the hard of hearing public in the wearing of hearing aids.

(2) Subsection (1) of this section does not apply to persons who obtain a license as sales people representing a licensed hearing aid dispenser.

(3) The board shall keep a record of the places of practice of persons who hold a regular license or temporary licenses. Any notice required to be given by the board to a person who holds a regular or temporary license may be given by mailing it to him at the address last given by him to the board.

History: En. Sec. 15, Ch. 204, L. 1969.

66-3016. Annual renewal fee—grace period—renewal after expiration of grace period—re-examination not necessary within three years of failure to renew. A person who practices the fitting of hearing aids shall annually pay to the board a fee of fifty dollars (\$50) for a renewal of his license. A thirty (30) day grace period shall be allowed after expiration of a license, during which it may be renewed on payment of a fee of fifty-five dollars (\$55) to the board. After the expiration of the grace period, the board may renew a license upon payment of sixty dollars (\$60) to the board. No person who applies for renewal, whose license was suspended for failure to renew, shall be required to submit to any

examination as a condition of renewal for a three (3) year period after suspension.

History: En. Sec. 16, Ch. 204, L. 1969.

66-3017. Revocation or suspension for cause. Any person registered under this act may have his license revoked or suspended for a fixed period to be determined by the board for any of the following causes:

(1) Being convicted of a felony. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or by the judge of the court, shall be sufficient evidence to warrant revocation or suspension, provided that the person has not been pardoned by a governor or the president of the United States.

(2) By securing a license under this act through fraud or deceit or false statements.

(3) For the personal use of a false name or alias in the practice of his profession, with fraudulent intent.

(4) For violating any of the provisions of this act.

(5) For obtaining any fee or making any sale by fraud or misrepresentation.

(6) Knowingly employing directly or indirectly any suspended or unlicensed person to perform any work covered by this act.

(7) Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation however disseminated or published, which is improbable, misleading, deceptive, or untruthful.

(8) Representing that the services or advice, of a person licensed to practice medicine, or possessing certification as an audiologist, will be used or made available in the selection, fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using the terms "doctor," "clinic," "state registered," or other like words, abbreviations or symbols which tend to connote the medical profession when that use is not accurate. The term "hearing center" shall be discontinued in accordance with the code of ethics of the National Hearing Aid Society.

(9) Permitting another to use his license or certificate.

(10) To defame competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or falsely to disparage the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies or services.

(11) To obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other lawful means.

(12) To directly or indirectly give, or offer to give, or permit or cause to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by

a hearing aid dispenser, or to influence persons to refrain from dealing in the products of competitors.

(13) Unethical conduct or gross incompetence or negligence in the performance of his duties, including repeated failure to make indicated medical referrals of his customers.

(14) Selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids, except in cases of selling replacement hearing aids.

History: En. Sec. 17, Ch. 204, L. 1969.

66-3018. Sale of dispensing business. A business dispensing hearing aids may be sold provided the new owners comply with all the provisions of this act.

History: En. Sec. 18, Ch. 204, L. 1969.

66-3019. Licensing of applicants licensed in other jurisdictions—examination unnecessary—fee. Whenever the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect pursuant to this act for the practice to fit and sell hearing aids, and that such state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants pursuant to this act are qualified to dispense and fit hearing aids, the board may issue a license to applicants who hold current, unsuspended and unrevoked licenses to fit and sell hearing aids in such other state or jurisdiction. No such applicants for a license pursuant to this subsection [section] shall be required to submit to or undergo a qualifying examination, or the like, other than the payment of fees, provided the person complies with all other requirements of this act.

History: En. Sec. 19, Ch. 204, L. 1969.

66-3020. Deposit of fees in earmarked revenue fund—appropriations—operating funds—per diem and travel expenses. (1) All fees including examination fees, license fees, renewal fees, fines, penalties and other payments, shall be deposited in an account in the earmarked revenue fund. The legislative assembly shall make appropriations out of the earmarked revenue fund for proper expenditures of the board, and no expenditure shall be made by the board until appropriation therefor has been made by the legislative assembly. Funds for operation of the board shall be disbursed under the general budgetary laws of the state.

(2) Each member of the board shall receive twenty dollars (\$20) per diem expenses when actually engaged in the discharge of his official duty, and in addition shall also be reimbursed for all reasonable and necessary travel expense in attending any meeting of the board within the state.

History: En. Sec. 20, Ch. 204, L. 1969.

66-3021. Practicing without a license a misdemeanor—penalty—injunctive enforcement authorized. (1) Any person who practices the

fitting or dispensing of hearing aids without a valid license shall be guilty of a misdemeanor and upon conviction be fined not more than five hundred dollars (\$500), or by imprisonment for not more than ninety (90) days, or both.

(2) The board may enforce any provision of this act by injunction or by any other appropriate proceeding.

History: En. Sec. 21, Ch. 204, L. 1969.

66-3022. Licensee entitled to disciplinary hearing if duly requested—right to appeal. (1) No license issued pursuant to this act may be suspended, revoked, denied or renewal denied without a hearing, if requested by the applicant, on due notice to the board within thirty (30) days after notice of the license being suspended, revoked or renewal denied.

(2) Any person aggrieved by a final decision of the board denying, revoking, or suspending a license may obtain review of the decision in the nature of an appeal in accordance with the provisions of this act on appeals.

History: En. Sec. 22, Ch. 204, L. 1969.

66-3023. Petition for district court review—time limit—service of petition—certification of questions of law—evidence outside record—exceptions unnecessary—record of board decisions open to inspection. (1) Thirty-one (31) days or sooner after the mailing of notice of a decision by the board, any party in interest who appeared before the board in connection with the matter may petition the assigned district court in the judicial district of the residence of the petitioner for the review of questions of law involved in the decision in the manner provided by law.

(2) The petitioner shall serve a copy of the petition and the accompanying papers upon the board eight (8) days or more prior to the date for which the application for relief is noticed, unless a shorter time is prescribed by an order to show cause granted by the court to which application is made.

(3) The board shall certify to the court in which the proceeding is pending questions of law involved in its decision. In making his decision, the judge of the district court may consider evidence outside the record.

(4) The proceeding to review and the questions certified are entitled to a preference. It is not necessary to file exceptions to the rulings of the board.

(5) Upon final determination of the proceeding to review, the board shall enter a decision in accordance with the court determination.

(6) A record of all decisions of the board, properly indexed, shall be open to public inspection at all times during business hours.

History: En. Sec. 23, Ch. 204, L. 1969. "It is the intent of the legislative assembly that if part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act

Separability Clause

Section 24 of Ch. 204, Laws 1969 read

is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 25 of Ch. 204, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 4, 1969.

CHAPTER 31—NURSING HOMES AND ADMINISTRATORS

- Section 66-3101. Definitions.
 66-3102. Composition of the board.
 66-3103. Qualifications for licensure.
 66-3104. Licensing function.
 66-3105. Fees.
 66-3106. Fund created.
 66-3107. Organization and compensation of board.
 66-3108. Exclusive jurisdiction of board.
 66-3109. Duties of the board.
 66-3110. Renewal of license.
 66-3111. Reciprocity.
 66-3112. Misdemeanor.
 66-3113. Professional license taxes not prohibited.
 66-3114. Judicial review.

66-3101. Definitions. For the purposes of this act, and as used herein:

(a) The term "board" means the Montana state board of examiners for nursing home administrators hereinafter created.

(b) The term "nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of an extended care facility or a nursing home, whether such individual has an ownership interest in such home, and whether his functions and duties are shared with one or more individuals.

(c) The term "nursing home" means any institution or facility defined as such for licensing purpose under state law or pursuant to the rules and regulations for nursing homes by the Montana state department of health, whether proprietary or nonprofit, including but not limited to, nursing homes owned or administered by the state government or an agency or political subdivision thereof.

History: En. Sec. 1, Ch. 363, L. 1969.

Title of Act

An act relating to nursing homes and nursing home administrators; providing for the licensing of nursing home administrators; to create the Montana state board of examiners for nursing home ad-

ministrators; fixing its membership, and prescribing its powers, duties and functions; providing requirements for licensure as a nursing home administrator; providing for license fees; creating the state board of nursing home administrators' account; containing a repealing clause and an effective date.

66-3102. Composition of the board. There is hereby created the state board of examiners for nursing home administrators which shall consist of five (5) members. The executive officer of the Montana state department of health, or his designee, and the administrator of the Montana state department of public welfare, or his designee, shall serve ex officio without the power to vote as members of such board. The members of the board shall be initially appointed by the governor from a list (which list shall include representatives of nursing home administrators and

university units offering programs in public health or medical or nursing home care administration) of nine (9) names submitted to the governor by the board of directors of the Montana Nursing Home Association, Inc. One (1) member shall be appointed for a term of three (3) years, two (2) members shall be appointed for a term of two (2) years, and two (2) members shall be appointed for a term of one (1) year; thereafter, the terms of all appointive members shall be three (3) years. The appointees shall be selected from a list of three (3) nominees submitted for each appointee, to the governor by the board of directors of the Montana Nursing Home Association, Inc.

Any vacancy occurring in the position of an appointive member shall be filled by the governor for the unexpired term, from a list of three (3) names submitted to the governor by the board of directors of the Montana Nursing Home Association, Inc. Appointive members may be removed by the governor for cause after due notice and hearing. Initial appointments of members representing nursing home administrators, after this act becomes effective, shall be limited to persons who are approved by the executive officer of the state department of health as a nursing home administrator (and serving in such capacity on the effective date of this act), as such term is defined by this act. After initial appointments have been made, no person shall be eligible for appointment as a member unless he is the holder of a license as a nursing home administrator.

History: En. Sec. 2, Ch. 363, L. 1969.

66-3103. Qualifications for licensure. The board shall have authority to issue licenses to qualified persons as nursing home administrators, and shall establish qualification criteria for such nursing home administrators. No license shall be issued to a person as a nursing home administrator unless:

(a) He is at least twenty-one (21) years of age, of good character and of sound physical and mental health; and

(b) Has satisfactorily completed a course of instruction and training prescribed by the board, which course shall be so designed as to content and so administered as to present sufficient knowledge of the needs properly to be served by nursing homes; laws governing the operation of nursing homes and the protection of the interests of patients therein; and the elements of good nursing home administration; or have presented evidence satisfactory to the board of sufficient education, training or experience in the foregoing fields to administer, supervise and manage a nursing home; and

(c) Has passed an examination administered by the board designed to test for competence in the subject matters referred to in subsection (b) hereof;

Provided, however, that persons meeting the standards of good character and sound physical and mental health who have been approved by the board as an "administrator" and are serving in such capacity on the effective date of this act, and who have served in this capacity

continuously for at least one (1) year immediately preceding, may be granted a license as a "nursing home administrator" by waiver. All other persons applying for a license after the effective date of this act must meet the conditions and requirements as may be prescribed by the board. A waiver may be granted for a period of two (2) years after the effective date of this act, or until June 30, 1972, whichever is earlier, to allow an individual to meet the requirements as determined by this board. The minimum standards for qualification established by said board shall comply with the requirements, if any, set forth in Title XIX of the Social Security Act, as amended, 1967 (P. L. 90-248).

History: En. Sec. 3, Ch. 363, L. 1969.

Compiler's Notes

This act becomes effective January 1, 1970.

66-3104. Licensing function. (a) The board shall license nursing home administrators in accordance with rules and regulations issued, and from time to time revised by it. A nursing home administrator's license shall not be transferable and shall be valid until surrendered for cancellation or suspended or revoked for violation of this act or any other laws or regulations relating to the proper administration and management of a nursing home. Denial of issuance or renewal, suspension or revocation under any section of this act shall be subject to review by the board upon the timely written request for review within thirty (30) days.

(b) If the board determines that preliminary qualifications set forth in subsections 3 (a) and 3 (b) [66-3103 (a) and (b)] of this act, have been met before examination it may issue a temporary permit for a period of one hundred eighty (180) days or until the date of the next subsequent examination, whichever is earlier. No temporary permit shall be issued to an applicant after the date of the first examination for which he is eligible.

History: En. Sec. 4, Ch. 363, L. 1969.

66-3105. Fees. (a) Each person who applies for licensure, whether by waiver, examination or reciprocity, shall be required to pay a fee of twenty-five dollars (\$25) at the time of such application.

(b) Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount to be fixed by the board, not to exceed one hundred dollars (\$100). A license shall expire on December 31, in the year for which it is issued, and shall be renewable annually upon timely payment of the license fee.

History: En. Sec. 5, Ch. 363, L. 1969.

66-3106. Fund created. All fees collected under the provisions of this act shall be paid monthly to the state treasurer, who shall keep the same in a special account to be known as the state board of examiners for nursing home administrators' account in the earmarked revenue fund, which account may be used and expended by the state department of health, in addition to other moneys appropriated to carry out

this act, to pay the compensation and expenses of members of the board, and other expenses necessary for the board to administer and carry out the provisions of this act.

History: En. Sec. 6, Ch. 363, L. 1969.

66-3107. Organization and compensation of board. The board shall elect from its membership a chairman, vice-chairman and secretary-treasurer, and shall adopt rules and regulations to govern its proceedings. As compensation for his services, each member shall receive twenty-five dollars (\$25) a day, in addition to expenses, for each day of actual service in the performance of his duties. All members shall be allowed necessary travel and living expenses, as may be approved by the board, which shall be payable in the same manner as travel expense of other state officials.

History: En. Sec. 7, Ch. 363, L. 1969.

66-3108. Exclusive jurisdiction of board. The board shall have exclusive authority to determine the qualifications, skill and fitness of any person to serve as an administrator of a nursing home under the provisions of this act, and the holder of a license under the provisions of this act shall be deemed qualified to serve as the administrator of a nursing home for all purposes.

History: En. Sec. 8, Ch. 363, L. 1969.

66-3109. Duties of the board. The board shall have the duty and responsibility to:

(a) Develop, impose and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to ensure that nursing home administrators shall be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators.

(b) Develop and apply appropriate techniques, including examination and investigations, for determining whether individuals meet such standards.

(c) Issue licenses to individuals, after application of such techniques, determined to meet such standards, and for cause, after due notice and hearing, to revoke or suspend licenses previously issued by the board in any case where the individual holding such license is determined substantially to have failed to conform to the requirements of such standards. Provided, however, the board may, in its discretion, defer execution of its order of revocation or suspension for the purpose of permitting continuity of care for patients when the need for such continuity of care outweighs any harm or danger which might result from the failure of such nursing home administrator to be licensed thereby resulting in the necessary closure of a nursing home.

(d) Establish and implement procedures designed to ensure that individuals licensed as nursing home administrators will, during any

period that they serve as such, comply with the requirements of such standards.

(e) Upon receipt of a written and signed complaint, an investigation of the matter contained in the complaint shall be initiated. At its next meeting, the complaint shall be presented to the board together with the report of investigation and recommendations and on the basis thereof, the board shall determine whether to bring charges and provide for a hearing.

(f) Conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes.

(g) Conduct, or cause to be conducted, one or more courses of instruction and training sufficient to meet the requirements of this act, and make provisions for the conduct of such courses and their accessibility to residents of this state, unless it finds that there are sufficient number of courses conducted by others within this state to meet the needs of the state. In lieu thereof the board may approve courses conducted within and without this state as sufficient to meet the education and training requirements of this act.

History: En. Eec. 9, Ch. 363, L. 1969.

66-3110. Renewal of license. Every holder of a nursing home administrator's license shall renew it annually by payment of the required fee for the next subsequent year, prior to the expiration of his currently valid license on December 31. Renewals of licenses shall be granted as a matter of course, unless the board finds, after due notice and hearing, that the applicant has acted or failed to act in such a manner, or under circumstances, as would constitute grounds for suspension or revocation of a license.

History: En. Sec. 10, Ch. 363, L. 1969.

66-3111. Reciprocity. The board may issue at its discretion a nursing home administrator's license, without examination, to any person who holds a current license as a nursing home administrator from another jurisdiction, provided that the board finds that the standards for licensure in such other jurisdiction are at least the substantial equivalent of those prevailing in this state, and that the applicant is otherwise qualified.

History: En. Sec. 11, Ch. 363, L. 1969.

66-3112. Misdemeanor. It shall be unlawful and constitute a misdemeanor for any person to act or serve in the capacity of a nursing home administrator unless he is the holder of a license as a nursing home administrator, issued in accordance with the provisions of this act.

History: En. Sec. 12, Ch. 363, L. 1969.

66-3113. Professional license taxes not prohibited. No provision of this act shall be construed as prohibiting or preventing a municipality

or county from fixing, charging, assessing or collecting any license fee, registration fee, tax or gross receipt tax on any profession covered by this act or upon any related profession or anyone engaged in any related profession governed by the provisions of this act.

History: En. Sec. 13, Ch. 363, L. 1969.

Repealing Clause

Section 14 of Ch. 363, Laws 1969 repealed all acts and parts of acts in conflict therewith.

66-3114. Judicial review. Any order or decision of the board relating to examination and licensure or revocation or suspension of license may be reviewed by the district court upon timely application to such court.

History: En. Sec. 15, Ch. 363, L. 1969.

Effective Date

Section 16 of Ch. 363, Laws 1969 read "This act is effective January 1, 1970."

TITLE 67—PROPERTY

Chapter 8. Obligations incidental to the ownership of real property—monuments and fences, 67-808, 67-809.

13. Acquisition of property by accession—fixtures—lands, etc., 67-1301.
14. Acquisition of personal property by accession—union of parts, 67-1410.
16. Transfer of real property—method and effect, 67-1602.1.
17. Transfer of personal property—modes of transfer, 67-1706.1.
18. Uniform Gifts to Minors Act, 67-1801 to 67-1804, 67-1806, 67-1807, 67-1810, 67-1811.
19. Principal and Income Act, 67-1912.
20. Surveys and co-ordinates, 67-2001 to 67-2019.
21. Sale or lease of subdivided lands, 67-2101 to 67-2136.
22. Disposition of unclaimed property, 67-2201 to 67-2230.
23. Unit Ownership Act, 67-2301 to 67-2342.

CHAPTER 1—GENERAL RIGHTS OF STATE OVER PROPERTY

67-103. (29) **Acquisition by taxation.**

References

Helena Gun Club v. Lewis and Clark County, 141 M 490, 379 P 2d 436.

CHAPTER 2—DEFINITIONS AND NATURE OF PROPERTY

67-201. (6663) **Property, what constitutes.**

References

Cited in State ex rel. Burns v. City of Livingston, 144 M 248, 395 P 2d 971, 973.

67-209. (6669) **Fixtures.**

Attachment to Realty

Where tenant built a small apartment attached to rented premises with the intention that it be permanent and without an agreement with the lessor that he would be allowed to remove any of the items which went into the construction and where the improvement was so attached that removal injured the premises, the property and chattels used in building

the apartment became fixtures as a matter of law and lessor who removed them after tenant left the premises was not guilty of conversion. Sanders v. Butte Motor Co., 142 M 524, 385 P 2d 263.

References

Benson & Bissell v. Wiseman, 145 M 429, 401 P 2d 78.

67-210. (6670) **Fixtures attached to mines.**

Mining Equipment

Grantee under tax deed of patented lode claim became owner of a mill and machinery used in mining both patented and unpatented mining claims as they were fixtures within the meaning of this section

and therefore a part of the patented claim, although located on adjacent land, since use of the mill by the former owner showed intent that it be attached. Benson & Bissell v. Wiseman, 145 M 429, 401 P 2d 78.

67-211. (6671) **Appurtenances.**

Conveyance of Appurtenant Water Rights

In the absence of a reservation by the grantor, water rights appurtenant to a divided tract are proportioned to each division, and the share received by each

division is determined by the ratio of number of irrigated acres to the total number of irrigated acres irrigated by the water. Spaeth v. Emmett, 142 M 231, 383 P 2d 812.

CHAPTER 3—OWNERSHIP OF PROPERTY AND INTERESTS THEREIN

67-307. (6679) **Ownership of several persons.****References**

Clark v. Clark, 143 M 183, 387 P 2d 907.

67-308. (6680) **Joint interest defined.****Contract for Sale of Real Estate**

Testatrix, sole owner of real estate, entered into a contract for the sale of the property, her husband joining in the execution of the contract. This contract, after setting forth the terms of payment, specified that all payments were to be made at a designated bank to credit of testatrix and her husband and that payments be deposited by said bank in an account subject to draft by testatrix and her husband or either of them or their survivor. This provision did not by itself operate to create a joint tenancy in the interest of the property being conveyed. The contract for the sale of the property not containing an express declaration establishing a joint tenancy in the property being sold thereunder as required by this section, the vendor's interest in the contract of sale passed into the estate of the testatrix under section 67-313 and her husband became the owner of the vendor's interest for life as provided in the will of testatrix and upon the death of the husband the vendor's interest passed to the residuary legatee of testatrix. Moxley v. Vaughn, 148 M 30, 416 P 2d 536, 539.

Estates by Entirety

While a joint tenancy is a joint interest, a joint interest is not limited to the estate of joint tenancy but may include estates by entirety; however, estates by the entirety are no longer a permissible mode of property ownership in this state, and where husband and wife took under a deed to them "as joint tenants with right of survivorship and not as tenants in common" the property was held in a joint tenancy and this was not converted by divorce into a tenancy in common. Clark v. Clark, 143 M 183, 387 P 2d 907.

67-310. **Right of survivorship in certain conveyances recognized.****Estates by Entirety**

While a joint tenancy is a joint interest, a joint interest is not limited to the estate of joint tenancy but may include estates by entirety; however, estates by the entirety are no longer a permissible mode of property ownership in this state, and where husband and wife took under a deed to them "as joint tenants with right of survivorship and not as tenants in

Ownership of Cattle

Although under this section and section 46-606 prima facie owners of the recorded brand have the same interest in the cattle bearing their brand as shown in brand record, joint ownership of the cattle may be contradicted and overcome by other evidence under 93-301-11. Marshall v. Minlschmidt, 148 M 263, 419 P 2d 486, 490.

In action by administrator of estate of deceased partner against surviving partners to recover assets transferred by deceased during his last illness, evidence that deceased had a half interest in partnership cattle and failure of defendants to produce any of the partnership records at the trial in the lower court, sustained finding that heir of deceased had overcome the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. Marshall v. Minlschmidt, 148 M 263, 419 P 2d 486, 491.

Shares of Stock

Stocks issued in the names of deceased and his children as joint tenants with the right of survivorship and not 'as tenants in common, deposited in safety deposit boxes rented in the names of the owners who had inspected the stock in the safety deposit boxes and included dividends from stocks in individual income tax returns, were delivered by the donor to the donees and did not belong to deceased at the time of his death so as to be a part of his estate. Marans v. Newland, 141 M 32, 374 P 2d 721, 735.

References

McReynolds v. McReynolds, 147 M 476, 414 P 2d 531.

common" the property was held in a joint tenancy and this was not converted by divorce into a tenancy in common. Clark v. Clark, 143 M 183, 387 P 2d 907.

Exception to Right of Survivorship

Where husband and wife owned realty jointly, and husband feloniously killed his wife, he did not acquire her share by right of survivorship but took the prop-

erty under a constructive trust, and when he thereafter committed suicide his heirs had no right to wife's share. *In re Cox' Estate*, 141 M 583, 380 P 2d 584.

67-313. (6683) What interests are in common.

Contract for Sale of Real Estate

Testatrix, sole owner of real estate, entered into a contract for the sale of that property, her husband joining in the execution of the contract. This contract, after setting forth the terms of payment, specified that all payments were to be made at a designated bank to credit of testatrix and her husband and that payments be deposited by said bank in an account subject to draft by testatrix and her husband or either of them or their survivor. This provision did not operate by itself to create a joint tenancy in the interest in the property being conveyed. The contract for the sale of the property

containing no express declaration establishing a joint tenancy in the property as required by section 67-308, the vendor's interest in the contract of sale passed into the estate of the testatrix, and her husband became the owner of the vendor's interest for life as provided in will of testatrix and upon the death of the husband the vendor's interest passed to the residuary legatee of testatrix. *Moxley v. Vaughn*, 148 M 30, 416 P 2d 536, 539.

References

Clark v. Clark, 143 M 183, 387 P 2d 907.

CHAPTER 4—CONDITIONS AND LIMITATIONS OF OWNERSHIP

67-406. (6705) How long it may be suspended.

NOTE.—Uniform State Law. Section 67-406(b) constitutes the "Model Rule against Perpetuities Act" approved by the National Conference of Commissioners on

Uniform State Laws and the American Bar Association in 1944, and adopted in substance in California and Wyoming.

67-408. (6707) Leases of agricultural and other lands.

Agricultural Lands

Twelve-year lease of agricultural land with one-third of annual crop as rental was invalid and unenforceable under portion of statute providing that no lease of

agricultural lands for period longer than ten years shall be valid; lease resulted in creation of year-to-year tenancy. *Eliason v. Eliason*, 151 M 409, 443 P 2d 884.

CHAPTER 5—REAL PROPERTY AND ESTATES THEREIN

67-525. (6746) Re-entry—when and how to be made.

References

United States v. Olsen, 245 F Supp 641.

CHAPTER 6—SERVITUDES

67-601. (6749) Servitudes attached to land.

Ditch Right of Way

A ditch right is an easement under subsection 11 of this section. *Hughes v. King*, 142 M 227, 383 P 2d 816.

In an action for a ditch easement, where defendant showed no actual right to the easement, the district court erred in

granting it merely because in doing so the damage done to plaintiff's property would be less than that done to the property of the defendant should the easement be denied. *Colarchik v. Watkins*, 144 M 17, 393 P 2d 786.

67-606. (6754) Extent of servitudes.

References

Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432.

67-609. (6757) Actions by owner and occupant of dominant tenement.**References**

Hughes v. King, 142 M 227, 383 P 2d 816.

CHAPTER 7—RIGHTS INCIDENTAL TO OWNERSHIP OF REAL PROPERTY

67-706. (6765) Rights of lessees and their assignees, etc.**Waiver of Restrictions**

A restriction in a lease against assignment by the lessee without written approval of the lessor is for the benefit of

the lessor and may be waived by accepting rent from the assignee and permitting him to remain in possession. Kintner v. Harr, 146 M 461, 408 P 2d 487.

67-712. (6771) Boundaries by water.**Avulsive Change**

Where stream channel, intended to serve as boundary, moved one-quarter mile in less than 100 years, such movement was "perceptible" and therefore

avulsive. McCafferty v. Young, 144 M 385, 397 P 2d 96.

References

Montgomery v. Gehring, 145 M 278, 400 P 2d 403.

67-713. (6772) Boundaries by ways.**References**

Montgomery v. Gehring, 145 M 278, 400 P 2d 403.

CHAPTER 8—OBLIGATIONS INCIDENTAL TO THE OWNERSHIP OF REAL PROPERTY—MONUMENTS AND FENCES

Section 67-808. Restriction on liability to gratuitous licensee for recreation.

67-809. Recreational purposes defined.

67-802. (6777) Monuments and fences.**Division Fence**

A party wishing to build a fence on a boundary line may do so without the consent of the other party, although the other party, when he decides to inclose

his land, is obligated to pay his share of the cost of erecting and maintaining the fence. Montgomery v. Gehring, 145 M 278, 400 P 2d 403.

67-803. (6778) Partition fences.**Effect of Natural Barriers**

Trial court's allowing plaintiff to fence land fifteen feet on other side of boundary line because of natural obstacles was erroneous, since, where a stream, bluff, or other obstacle is encountered, the fence should be either discontinued or moved to the very edge of land around the ob-

stacle, in fairness to the interests of both parties. Montgomery v. Gehring, 145 M 278, 400 P 2d 403.

References

Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365.

67-807. (6782) Repairs of partition fences.**Venue**

Since the liability imposed by this section is a penalty, under section 93-2902 venue lies where the cause of action arose

and not where the defendant resides. Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365.

67-808. Restriction on liability to gratuitous licensee for recreation.
A landowner or tenant who permits by act or implication, any person to

enter upon any property in the possession or under the control of such landowner or tenant for any recreational purpose without accepting a valuable consideration therefor, does not by granting such permission, extend any assurance that such property is safe for any purpose, nor confer upon such a person the status of invitee or licensee to whom any duty of care is owed, and such landowner or tenant, shall not be liable to such person for any injury to person or property resulting from any act or omission of such landowner or tenant, unless such act or omission constitutes willful or wanton misconduct.

History: En. Sec. 1, Ch. 138, L. 1965.

Title of Act

An act limiting the liability of a land-

owner or tenant to persons permitted to enter lands for recreational purposes, and defining recreational purposes.

67-809. Recreational purposes defined. Recreational purposes as used herein shall include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking or other pleasure expeditions.

History: En. Sec. 2, Ch. 138, L. 1965.

CHAPTER 12—ACQUISITION OF PROPERTY BY OCCUPANCY

67-1203. (6818) Prescription.

Easement by Prescription

Title to an easement acquired by prescription is as effective as though evidenced by a deed. *Scott v. Weinheimer*, 140 M 554, 374 P 2d 91, 94.

To establish the existence of an easement by prescription, the party so claiming must show open, notorious, exclusive, adverse, continuous and uninterrupted use of the easement claimed for the full statutory period. *Scott v. Weinheimer*, 140 M 554, 374 P 2d 91, 95.

Plaintiffs, who acquired prescriptive easement in road across property of defendants by use for thirty-five years before defendants acquired title to the land and attempted to obstruct use, were entitled to enjoin defendants from interfering with use of right of way over road. *Scott v. Weinheimer*, 140 M 554, 374 P 2d 91, 96.

Highway Established by Prescription

Where county adversely paved and maintained a highway over the land of a private party for a period of more than ten years, the county acquired an easement by prescription over the land even though the private owner was assessed for and paid taxes on the property during the running of the statutory period. *Brannon v. Lewis and Clark County*, 143 M 200, 387 P 2d 706.

Prescription To Establish Highway

Road running down center line separating two properties and used by each owner was easement created by prescriptive use within meaning of word "occupancy" as used in statute but width of road could never exceed greatest use made of land for full prescriptive period. *State v. Portmann*, 149 M 91, 423 P 2d 56.

Public highway was established by prescription on evidence that members of public had used road openly for more than 50 years without ever having obtained permission from owners, that previous owner had considered road to be public highway, that the road had been maintained by the county for some 24 years and that public had never been denied use of road. *Kostbade v. Metier*, 150 M 139, 432 P 2d 382.

Water Rights

Defendants failed to establish a prescriptive water right regardless of priority of rights, where depositions which were self-serving declarations were not admissible as ancient documents or public records as exceptions to hearsay rule and no other satisfactory proof of possession or use of the water was shown. *King v. Schultz*, 141 M 94, 375 P 2d 108, 110.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

CHAPTER 13—ACQUISITION OF PROPERTY BY ACCESSION—FIXTURES
—ISLANDS, ETC.

Section 67-1301. Fixtures.

67-1301. (6819) Fixtures. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in section 67-1307 and in the Uniform Commercial Code, belongs to the owner of the land, unless he chooses to require the former to remove it. [Effective January 1, 1965.]

History: En. Sec. 1400, Civ. C. 1895; re-en. Sec. 4572, Rev. C. 1907; re-en. Sec. 6819, R. C. M. 1921; amd. Sec. 11-146, Ch. 264, L. 1963. Cal. Civ. C. Sec. 1013. Based on Field Civ. C. Sec. 442.

Amendment

The 1963 amendment inserted "and in the Uniform Commercial Code."

Attachment to Realty

Where tenant built a small apartment attached to rented premises with the in-

tention that it be permanent and without an agreement with the lessor that he would be allowed to remove any of the items which went into the construction and where the improvement was so attached that removal injured the premises, the property and chattels used in building the apartment became fixtures as a matter of law and lessor who removed them after tenant left the premises was not guilty of conversion. *Sanders v. Butte Motor Co.*, 142 M 524, 385 P 2d 263.

67-1303. (6821) Sudden removal of bank.

References

Cited in *McCafferty v. Young*, 144 M 385, 397 P 2d 96.

67-1307. (6825) Fixtures—removal of by tenant.

Manner of Attachment

Where tenant built a small apartment attached to rented premises with the intention that it be permanent and without an agreement with the lessor that he would be allowed to remove any of the items which went into the construction and where the apartment was so attached

that removal injured the premises, the property and chattels used in building the apartment became fixtures as a matter of law and lessor who removed them after tenant left the premises was not guilty of conversion. *Sanders v. Butte Motor Co.*, 142 M 524, 385 P 2d 263.

CHAPTER 14—ACQUISITION OF PERSONAL PROPERTY BY ACCESSION
—UNION OF PARTS

Section 67-1410. Uniform Commercial Code—applicability.

67-1410. Uniform Commercial Code—applicability. The provisions of this chapter apply only to the extent not otherwise provided for in the Uniform Commercial Code. [Effective January 1, 1965.]

History: En. 67-1410 by Sec. 11-147, Ch. 264, L. 1963.

CHAPTER 15—ACQUISITION OF PROPERTY BY TRANSFER—GRANTS
AND THEIR INTERPRETATION

67-1518. (6852) Interpretation against grantor.

References

McReynolds v. McReynolds, 147 M 476, 414 P 2d 531.

CHAPTER 16—TRANSFER OF REAL PROPERTY—METHOD AND EFFECT

Section 67-1602.1. Joint tenancy created by direct conveyance.

67-1601. (6859) Requisites for transfer of certain estates.

Conveyance Required for Trade or Exchange

An agreement whereby lessee sold his liquor license for \$9,000 plus a promise by the buyer that he would assume the lease

on property in which lessee conducted his cafe satisfied the requirements of this section in that the agreement was in writing and signed by the lessee. *Kintner v. Harr*, 146 M 461, 408 P 2d 487.

67-1602.1. Joint tenancy created by direct conveyance. A joint tenancy as to any interest in real property may be established by the owner thereof, by designating in the instrument of conveyance or transfer, the names of such joint tenants including his own, without the necessity of any transfer or conveyance to or through a third person.

History: En. Sec. 1, Ch. 208, L. 1963.

Title of Act

An act to provide that a joint tenancy,

ownership of property may be established by conveyance or transfer of such property without the necessity of transfer to or through any third person.

67-1607. (6865) What easements pass with property.

Conveyance of Servient Tenement

The doctrine of implied easements by reservation as set forth in this section will apply where the servient tenement is severed and conveyed but the dominant tenement is retained by the grantor.

Spaeth v. Emmett, 142 M 231, 383 P 2d 812.

References

Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432.

67-1608. (6866) When fee simple is presumed to pass.

References

McReynolds v. McReynolds, 147 M 476, 414 P 2d 531.

67-1610. (6868) Grant—how far conclusive on purchasers.

References

McReynolds v. McReynolds, 147 M 476, 414 P 2d 531.

CHAPTER 17—TRANSFER OF PERSONAL PROPERTY—
MODES OF TRANSFER

Section 67-1706.1. Sending of unsolicited goods deemed a gift—no obligation in recipient.

67-1702 to 67-1704. (6878 to 6880) Repealed.

Repeal

These sections (Secs. 1531, 1540, 1541, Civ. C. 1895), relating to the transfer of

personal property by sale, were repealed by Sec. 10-102, Ch. 264, Laws 1963, effective January 1, 1965.

67-1706. (6882) Gifts defined.

Shares of Stock

Stocks which had been purchased by the deceased with his own funds and had been issued jointly to him and his son and daughter with right of survivorship and to son and daughter as tenants in common, deposited in safety deposit boxes rented in the names of the owners who

had inspected the stock in the safety deposit boxes and included dividends from stocks in individual income tax returns, were delivered by the donor to the donees and did not belong to deceased at the time of his death so as to be a part of his estate. *Marans v. Newland*, 141 M 32, 374 P 2d 721, 735.

Stock Certificates

Aged mother did not make gift of stock certificates to son where there was no

transfer of title to certificates in manner provided by Uniform Stock Transfer Act. Bodine v. Bodine, 149 M 29, 422 P 2d 650.

67-1706.1. Sending of unsolicited goods deemed a gift—no obligation in recipient. Unless otherwise agreed, where unsolicited goods are delivered to a person, he may refuse delivery of the goods or, if the goods are delivered, the person is not bound to return the goods to the sender. If unsolicited goods are either addressed to, or intended for, the recipient, they shall be deemed a gift, and the recipient may use or dispose of them in any manner without obligation to the sender.

History: En. Sec. 1, Ch. 210, L. 1967.

goods from any obligation to return or pay for the goods.

Title of Act

An act releasing recipients of unsolicited

67-1707. (6883) Gift—how made.**References**

Cited in Marans v. Newland, 141 M 32, 374 P 2d 721, 722, 735.

CHAPTER 18—UNIFORM GIFTS TO MINORS ACT

Section 67-1801. Definitions.

67-1802. Manner of making gift.

67-1803. Effect of gift.

67-1804. Duties and powers of custodian.

67-1806. Exemption of third persons from liability.

67-1807. Resignation, death or removal of custodian—bond—designation of successor custodian.

67-1810. Short title.

67-1811. Vested rights not to be impaired.

67-1801. Definitions. In this act, unless the context otherwise requires:

(a) An "adult" is a person who has attained the age of twenty-one (21) years.

(b) and (c). * * * [Same as parent volume.]

(d) "Court" means the district court of general jurisdiction in the state of Montana.

(e) The "custodial property" includes:

(1) all securities, life insurance policies, annuity contracts and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this act;

(2) the income from the custodial property; and

(3) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such securities, money, life insurance policies, annuity contracts and income.

(f) A "custodian" is a person so designated in a manner prescribed in this act: the term includes a successor custodian.

(g) A "financial institution" is a bank, a federal savings and loan association, a savings institution chartered and supervised as a savings

and loan or similar institution under federal laws or the laws of a state or a federal credit union or a credit union chartered and supervised under the laws of a state: a "domestic financial institution" is one chartered and supervised under the laws of this state or chartered and supervised under federal law and having its principal office in this state: an "insured financial institution" is one, deposits (including a savings, share, certificate or deposit account) in which are, in whole or in part, insured by the federal deposit insurance corporation, by the federal savings and loan insurance corporation, or by a deposit insurance fund approved by this state.

(h) A "guardian" of a minor means the general guardian, guardian, tutor or curator of his property, or estate appointed or qualified by a court of this state or another state.

(i) An "issuer" is a person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

(j) A "legal representative" of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.

(k) A "life insurance policy or annuity contract" means a life insurance policy or annuity contract issued by an insurance company authorized to do business in this state on the life of a minor to whom a gift of the policy or contract is made in the manner prescribed in this act or on the life of a member of the minor's family.

(l) A "member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.

(m) A "minor" is a person who has not attained the age of twenty-one (21) years.

(n) A "security" includes any note, stock treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(o) A "transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities, or in the cancellation of surrendered securities.

(p) A "trust company" is a bank or corporation authorized to exercise trust powers in the state of Montana.

History: En. Sec. 1, Ch. 245, L. 1957; amd. Sec. 1, Ch. 234, L. 1967.

Amendments

The 1967 amendment, in subdivision (e)(1), inserted "life insurance policies, annuity contracts" after "all securities"; in subdivision (e)(3), inserted "surrender" after "reinvestment," and "life insurance policies, annuity contracts" after "money"; in subdivision (f), added "the term includes a successor custodian" after "in this act"; added a new subdivision (g); redesignated prior subdivisions (g) through (i) as new subdivisions (h) through (j); added a new subdivision (k); redesignated prior subdivisions (j) through (n) as new subdivisions (l) through (p); and, in new subdivision (h), substituted "means" for "includes" after "a minor," inserted "or" after "of his property," and substituted "appointed or qualified by a

court of this state or another state" for "or person"; in new subdivision (p), inserted "or corporation" after "a bank"; and made minor changes in phraseology and punctuation.

NOTE.—Uniform State Law. The 1967 amendments have the effect, in substance, of substituting the Revised Uniform Gifts to Minors Act for the original Uniform Gifts to Minors Act (1956). Sections 67-1801 to 67-1811 now constitute the Revised Uniform Gifts to Minors Act approved by the National Conference of Commissioners on Uniform Laws in 1965 and adopted in New York.

In addition to the states listed in the parent volume, the following jurisdictions have now adopted the 1956 version of the Uniform Gifts to Minors Act: Colorado, District of Columbia, New Jersey, Ohio, Panama Canal Zone, and Rhode Island.

67-1802. Manner of making gift. (a) An adult person may, during his lifetime, make a gift of a security, a life insurance policy or annuity contract or money to a person who is a minor on the date of the gift:

(1) and (2). * * * [Same as parent volume.]

(3) if the subject of the gift is money, by paying or delivering it to a broker or a domestic financial institution for a credit to an account in the name of the donor, another adult, (an adult member of the minor's family, a guardian of the minor) or a trust company, followed, in substance, by the words: "as custodian for _____ under the (name of minor)

Montana Uniform Gifts to Minors Act."

(b) Any gift made in a manner prescribed in subsection (a) may be made to only one minor and only one person may be the custodian.

(c) A donor who makes a gift to a minor in a manner prescribed in subsection (a) shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this subsection, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift;

(4) if the subject to the gift is a life insurance policy or annuity contract, by causing the ownership of the policy or contract to be registered with the issuing insurance company in the name of the donor, another adult, an adult member of the minor's family, a guardian of the minor or a trust company, followed, in substance, by the words: "as custodian for _____ under the Montana Uniform Gifts to Minors Act." (name of minor)

History: En. Sec. 2, Ch. 245, L. 1957; amd. Sec. 2, Ch. 234, L. 1967.

Amendments

The 1967 amendment, in subsection (a),

inserted "a life insurance policy or annuity contract" after "of a security"; in subsection (a)(3), substituted "a domestic financial institution for a credit" for "a bank for credit" before "to an account," deleted

"person" after "adult," and substituted powers" before "followed, in substance"; "trust company" for "bank with trust and added subsection (c)(4).

67-1803. Effect of gift. (a) A gift made in a manner prescribed in this act is irrevocable and conveys to the minor indefeasibly vested legal title to the security, life insurance policy, annuity contract or money given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this act.

(b) By making a gift in a manner prescribed in this act, the donor incorporates in his gift all the provisions of this act and grants to the custodian, and to any issuer, transfer agent, bank, financial institution, life insurance company, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this act.

History: En. Sec. 3, Ch. 245, L. 1957; inserted "life insurance policy, annuity contract" after "security," and, in subsection (b), inserted "financial institution, life insurance company" after "bank."
amd. Sec. 3, Ch. 234, L. 1967.

Amendments

The 1967 amendment, in subsection (a),

67-1804. Duties and powers of custodian. (a) and (b). * * * [Same as parent volume.]

(c) The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen (14) years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

(d) To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one (21) years, or if the minor dies before attaining the age of twenty-one (21) years, he shall thereupon deliver or pay it over to the estate of the minor.

(e) The custodian, notwithstanding statutes restricting investment by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this act or hold money so given in an account in the financial institution to which it was paid or delivered by the donor.

(f) The custodian may sell, exchange, convert, surrender or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any

and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

(g) The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for _____ under the (name of minor)

Montana Uniform Gifts to Minors Act." The custodian shall hold all money which is custodial property in an account with a broker or in an insured domestic financial institution in the name of the custodian, followed, in substance, by the words: "as custodian for _____ (name of minor)

under the Montana Uniform Gifts to Minors Act." The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

(h) The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen (14) years.

(i). * * * [Same as parent volume.]

(j) If the subject of the gift is a life insurance policy or annuity contract, the custodian:

(1) in his capacity as custodian, has all the incidents of ownership in the policy or contract to the same extent as if he were the owner, except that the designated beneficiary of any policy or contract on the life of the minor shall be the minor's estate and the designated beneficiary of any policy or contract on the life of a person other than the minor shall be the custodian as custodian for the minor for whom he is acting; and

(2) may pay premiums on the policy or contract out of the custodial property.

History: En. Sec. 4, Ch. 245, L. 1957; amd. Sec. 4, Ch. 234, L. 1967.

donor" after "in this act"; in subsection (f), inserted "surrender" after "convert"; in subsection (g), substituted "an insured domestic financial institution" for "a bank" after "with a broker or in"; added subsection (j); and inserted arabic numbers after the written numbers throughout the section.

Amendments

The 1967 amendment, in subsection (e), added "or hold money so given in an account in the financial institution to which it was paid or delivered by the

67-1806. Exemption of third persons from liability. No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated as custodian by the purported donor or by the custodian or purporting to act as a custodian has been duly designated or whether any purchase, sale, or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this act, or is obliged to inquire into the validity or propriety under this act of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound

to see to the application by any person purporting to act in the capacity of custodian of any money or other property paid or delivered to him. No issuer, transfer agent, bank, life insurance company, broker or other person or financial institution acting on any instrument of designation of a successor custodian, executed as provided in subsection (a) of section 7 [67-1807] of this act by a minor to whom a gift has been made in a manner prescribed in this act and who has attained the age of fourteen (14) years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under this act of the instrument of designation.

History: En. Sec. 6, Ch. 245, L. 1957; amd. Sec. 5, Ch. 234, L. 1967.

Amendments

The 1967 amendment inserted "life insurance company" after "bank"; inserted

"or financial institution" after "other person"; inserted "as custodian" after "designated"; inserted "or by the custodian" after "the purported donor"; added the last sentence, and made minor changes in phraseology and punctuation.

67-1807. Resignation, death or removal of custodian—bond—designation of successor custodian. (a) Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become a successor custodian. A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may, but need not, contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated, and the minor has attained the age of fourteen (14) years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this act.

(b) The designation of a successor custodian as provided in subsection (a) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative:

(1) causes the item if it is a security which is custodial property and in registered form or a life insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance policy or annuity contract, in the name of the successor custodian followed, in substance, by the words: "as custodian for _____ under the Montana Uniform Gifts to Minors Act"; and (name of minor)

(2) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

(c) A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection (a) shall promptly do all things within his power to put each item of

the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (a) by the custodian or, if none, by the minor if he has no guardian and has attained the age of fourteen (14) years, or in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (a) more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by the instrument dated on a later date.

(d) If a person designated as custodian or as successor custodian by the custodian as provided in subsection (a) is not eligible, dies or becomes legally incapacitated before the minor attains the age of twenty-one (21) years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (a), a donor, his legal representative of the custodian or an adult member of the minor's family may petition the court for the designation of a successor custodian.

(e) A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of fourteen (14) years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

(f) Upon the filing of a petition as provided in this section, the district court shall grant and order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

History: En. Sec. 7, Ch. 245, L. 1957; **Amendments**
amd. Sec. 6, Ch. 234, L. 1967.

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

67-1810. Short title. This act may be cited as the Revised Montana Uniform Gifts to Minors Act.

History: En. Sec. 10, Ch. 245, L. 1957; **Amendments**
amd. Sec. 7, Ch. 234, L. 1967.

The 1967 amendment inserted "Revised" before "Montana."

67-1811. Vested rights not to be impaired. Nothing in this act shall be construed to impair constitutionally vested rights. The provisions of the act hereby amended as hereby amended shall be construed as a continuation of the act hereby amended according to the language employed and not as a new enactment. This amendment of the act hereby amended does not affect gifts made in a manner prescribed therein nor the powers,

duties or immunities conferred by gifts in such manner upon custodians and persons dealing with custodians. The provisions of the act hereby amended as hereby amended henceforth apply, however, to all gifts made in a manner and form prescribed in the act hereby amended except in so far as such application impairs constitutionally vested rights.

History: En. Sec. 12, Ch. 245, L. 1957;
amd. Sec. 8, Ch. 234, L. 1967.

Amendments

The 1967 amendment added the second, third and last sentences.

CHAPTER 19—PRINCIPAL AND INCOME ACT

Section 67-1912. Expenses—apportionment.

67-1912. Expenses—apportionment. (1) All ordinary expenses incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the estates of both tenant and remainderman, interest on mortgages on the principal, ordinary repairs, trustees' compensation annually computed on principal, compensation of assistants, and court costs and attorneys' and other fees on regular accountings, shall be paid out of income. But such expenses where incurred in disposing of, or as carrying charges on, unproductive estate as defined in section 67-1911, shall be paid out of principal, subject to the provisions of subsection (2) of section 67-1911.

(2) All other expenses, including trustees' final termination commissions computed upon principal, cost of investing or reinvesting principal, attorneys' fees and other costs incurred in maintaining or defending any action to protect the trust or the property or assure the title thereof, unless due to the fault or cause of the tenant, and costs of, or assessments for, improvements to property forming part of the principal, shall be paid out of principal. Any tax levied by any authority, federal, state or foreign, upon profit or gain defined as principal under the terms of subsection (2) of section 67-1903 shall be paid out of principal, notwithstanding said tax may be denominated a tax upon income by the taxing authority.

(3) Expenses paid out of income according to subsection (1) which represent regularly recurring charges shall be considered to have accrued from day to day, and shall be apportioned on that basis whenever the right of the tenant begins or ends at some date other than the payment date of the expenses. Where the expenses to be paid out of income are of unusual amount, the trustee may distribute them throughout an entire year or part thereof, or throughout a series of years. After such distribution, where the right of the tenant ends during the period, the expenses shall be apportioned between tenant and remainderman on the basis of such distribution.

(4) Where the costs of, or special taxes or assessments for, an improvement representing an addition of value to property held by the trustee as part of principal are paid out of principal, as provided in subsection (2), the trustee shall reserve out of income and add to the principal each year a sum equal to the cost of the improvement divided by the number of years of the reasonably expected duration of the improvement.

History: En. Sec. 12, Ch. 277, L. 1959; amd. Sec. 1, Ch. 134, L. 1965.

Amendment

The 1965 amendment substituted "annually" for "except commissions" follow-

ing "trustees' compensation" in the first sentence of subsection (1); and inserted "final termination" following "including trustees'" near the beginning of subsection (2).

CHAPTER 20—SURVEYS AND CO-ORDINATES

- Section 67-2001. Corner recordation—citation of act.
 67-2002. Purpose of act.
 67-2003. Definitions.
 67-2004. Filing of corner record required.
 67-2005. Filing permitted as to any property corner.
 67-2006. Form to be prescribed by board.
 67-2007. County clerk shall receive, file and cross reference.
 67-2008. Surveyor must rehabilitate monuments.
 67-2009. Corner records to be certified.
 67-2010. Filing of corner records on locations made before effective date.
 67-2011. Co-ordinate system adopted—designation—division of state into zones.
 67-2012. Designation of zonal systems.
 67-2013. Use of x- and y-co-ordinates.
 67-2014. Descriptions of tracts lying across zone boundaries.
 67-2015. Technical description of zones—stations marked on ground.
 67-2016. Proximity to station required for use of co-ordinates in recorded instrument.
 67-2017. References to Montana Co-ordinate System.
 67-2018. Public land survey descriptions prevail.
 67-2019. Reliance on co-ordinate system not required of purchaser or mortgagee.

67-2001. Corner recordation—citation of act. This act may be cited as the "Corner Recordation Act of Montana."

History: En. Sec. 1, Ch. 202, L. 1963.

Title of Act

An act requiring and providing for filing of corner records containing information on public land survey corners by a licensed land surveyor; defining terms; providing for filing and filing fees, and making records available to the public;

allowing licensed land surveyors to file information on any property corner; requiring surveyors to reconstruct and perpetuate monuments of public land survey corners; directing that unconstitutionality of a part of this act shall not affect or impair the remainder, and repealing all acts and parts of acts inconsistent herewith.

67-2002. Purpose of act. It is the purpose of this act to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners, thereby providing for property security and a coherent system of property location and identification of ownerships; and thereby eliminating the repeated necessity for re-establishment and relocations of such corners where once they are established and located.

History: En. Sec. 2, Ch. 202, L. 1963.

67-2003. Definitions. Except where the context indicates a different meaning, terms used in this act shall be defined as follows:

(1) A "property corner" is a geographic point on the surface of the earth, and is on, a part of, and controls a property line.

(2) A "property controlling corner" for a property is a public land survey corner, or any property corner, which does not lie on a property line of the property in question, but which controls the location of one or more of the property corners of the property in question.

(3) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.

(4) A "corner," unless otherwise qualified, means a property corner, or a property controlling corner, or a public land survey corner, or any combination of these.

(5) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.

(6) A "monument" is an accessory that is presumed to occupy the exact position of a corner.

(7) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself, but whose spatial relationship to the corner is recorded, and which serves to witness the corner.

(8) A "registered surveyor" is a surveyor who is registered to practice land surveying under the Montana Professional Engineers Registration Act and has a paid up license for that calendar year, or who is authorized under the Montana Professional Engineers Registration Act to practice land surveying.

(9) The "board" is the state board of registration for professional engineers and land surveyors.

History: En. Sec. 3, Ch. 202, L. 1963.

67-2004. Filing of corner record required. A surveyor shall complete, sign, stamp with his seal and file with the county clerk and recorder of the county where the corner is situated, a written record of corner establishment or restoration to be known as a "corner record" for every public land survey corner and accessory to such corner which is established, re-established, monumented, re-monumented, restored, rehabilitated, perpetuated or used as control in any survey by such surveyor, and within ninety (90) days thereafter, unless the corner and its accessories are substantially as described in an existing corner record filed in accordance with the provisions of this act.

History: En. Sec. 4, Ch. 202, L. 1963.

67-2005. Filing permitted as to any property corner. A surveyor may file such corner record as to any property corner, property controlling corner, reference monument or accessory to a corner.

History: En. Sec. 5, Ch. 202, L. 1963.

67-2006. Form to be prescribed by board. The board shall by regulation provide and prescribe the information which shall be necessary to be

included in the corner record and the board shall prescribe the form in which such corner record shall be presented and filed.

History: En. Sec. 6, Ch. 202, L. 1963.

67-2007. County clerk shall receive, file and cross reference. (1) The county clerk and recorder of the county containing the corner shall receive the completed corner record and preserve it in a hardbound book. The books shall be numbered in numerical order as filled.

(2) The clerk shall number the forms in numerical order as they are filed.

(3) The book and page number in which the said corner record is filed shall be placed by the clerk near that same corner on a cross index plat which the clerk shall provide for such a purpose.

(4) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(5) For purposes of determining the filing fee hereunder, the corner record shall be considered as a similar service to recording a townsite map of one (1) lot.

History: En. Sec. 7, Ch. 202, L. 1963.

67-2008. Surveyor must rehabilitate monuments. In every case where a corner record of a public land survey corner is required to be filed under the provisions of this act, the surveyor must reconstruct or rehabilitate the monument of such corner, and accessories to such corner, so that the same shall be left by him in such physical condition that it remains as permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.

History: En. Sec. 8, Ch. 202, L. 1963.

67-2009. Corner records to be certified. No corner record shall be filed unless the same is signed by a registered surveyor and stamped with his seal, or in the case of an agency of the United States government or the state of Montana the certificate may be signed by the survey party chief, making the survey and approved, signed and sealed by the registered surveyor in responsible charge of the agency.

History: En. Sec. 9, Ch. 202, L. 1963.

67-2010. Filing of corner records on locations made before effective date. Corner records may be filed concerning corners established, re-established or restored before the effective date of this act.

History: En. Sec. 10, Ch. 202, L. 1963.

Separability Clause

Section 11 of Ch. 202, Laws 1963 read "Severability of provisions. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is

invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 12 of Ch. 202, Laws 1963 repealed all acts and parts of acts inconsistent therewith.

67-2011. Co-ordinate system adopted—designation—division of state into zones. The system of plane co-ordinates which has been established by the United States Coast and Geodetic Survey for defining and stating

the positions or locations of points on the surface of the earth within the state of Montana is hereafter to be known and designated as the "Montana Co-ordinate System."

For the purpose of the use of this system the state is divided into a "North Zone," and "Central Zone," and a "South Zone."

The area now included in the following counties shall constitute the North Zone: Blaine, Chouteau, Daniels, Flathead, Glacier, Hill, Liberty, Lincoln, McCone, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley.

The area now included in the following counties shall constitute the Central Zone: Cascade, Dawson, Fergus, Garfield, Judith Basin, Lake, Lewis and Clark, Meagher, Mineral, Missoula, Petroleum, Powell, Prairie, Richland, Sanders, and Wibaux.

The area now included in the following counties shall constitute the South Zone: Beaverhead, Big Horn, Broadwater, Carbon, Carter, Custer, Deer Lodge, Fallon, Gallatin, Golden Valley, Granite, Jefferson, Madison, Musselshell, Park, Powder River, Ravalli, Rosebud, Silver Bow, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone.

History: En. Sec. 1, Ch. 232, L. 1965.

Title of Act

An act to describe, define, and officially

adopt a system of co-ordinates for designating and stating the positions of points on the surface of the earth within Montana.

67-2012. Designation of zonal systems. As established for use in the North Zone, the Montana Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Montana Co-ordinate System, North Zone."

As established for use in the Central Zone, the Montana Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Montana Co-ordinate System, Central Zone."

As established for use in the South Zone, the Montana Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Montana Co-ordinate System, South Zone."

History: En. Sec. 2, Ch. 232, L. 1965.

67-2013. Use of x- and y-co-ordinates. The plane co-ordinates of a point on the earth's surface, to be used in expressing the position or location of such point in the appropriate zone of this system, shall consist of two distances, expressed in feet and decimals of a foot. One of these distances, to be known as the "x-co-ordinate," shall give the position in an east-and-west direction; the other, to be known as the "y-co-ordinate," shall give the position in a north-and-south direction. These co-ordinates shall be made to depend upon and conform to the co-ordinates, on the Montana Co-ordinate System, of the triangulation and traverse stations of the United States Coast and Geodetic Survey within the state of Montana, as those co-ordinates have been determined by the said survey.

History: En. Sec. 3, Ch. 232, L. 1965.

67-2014. Descriptions of tracts lying across zone boundaries. When any tract of land to be defined by a single description extends from one into another of the above co-ordinate zones, the positions of all points on

its boundaries may be referred to either of such zones, the zone which is used being specifically named in the description.

History: En. Sec. 4, Ch. 232, L. 1965.

67-2015. Technical description of zones—stations marked on ground.

(a) For purposes of more precisely defining the Montana Co-ordinate System, the following description by the United States Coast and Geodetic Survey is adopted:

The Montana Co-ordinate System, North Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes $47^{\circ} 51'$ and $48^{\circ} 43'$, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian $109^{\circ} 30'$ west of Greenwich and the parallel $47^{\circ} 00'$ north latitude. This origin is given the co-ordinates: $x = 2,000,000$ feet and $y = 0$ feet.

The Montana Co-ordinate System, Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes $46^{\circ} 27'$ and $47^{\circ} 53'$, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian $109^{\circ} 30'$ west of Greenwich and the parallel $45^{\circ} 50'$ north latitude. This origin is given the co-ordinates: $x = 2,000,000$ feet and $y = 0$ feet.

The Montana Co-ordinate System, South Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes $44^{\circ} 52'$ and $46^{\circ} 24'$, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian $109^{\circ} 30'$ west of Greenwich and the parallel $47^{\circ} 00'$ north latitude. This origin is given the co-ordinates: $x = 2,000,000$ feet and $y = 0$ feet.

(b) The position of the Montana Co-ordinate System shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the United States Coast and Geodetic Survey for first-order and second-order work, whose positions have been rigidly adjusted on the North American datum of 1927, and whose co-ordinates have been computed on the system herein defined. Any such station may be used for establishing a survey connection with the Montana Co-ordinate System.

History: En. Sec. 5, Ch. 232, L. 1965.

67-2016. Proximity to station required for use of co-ordinates in recorded instrument. No co-ordinates based on the Montana Co-ordinate System, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public land records or deed records unless such point is within one-half mile of a triangulation or traverse station established in conformity with the standards prescribed in section 5 [67-2015] of this act; provided that said one-half mile limitation may be modified by a duly authorized state agency to meet local conditions.

History: En. Sec. 6, Ch. 232, L. 1965.

67-2017. References to Montana Co-ordinate System. The use of the term "Montana Co-ordinate System" on a map, report of survey, or other document, shall be limited to co-ordinates based on the Montana Co-ordinate System as defined in this act.

History: En. Sec. 7, Ch. 232, L. 1965.

67-2018. Public land survey descriptions prevail. Whenever co-ordinates based on the Montana Co-ordinate System are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by co-ordinates shall be construed as supplemental to the basic description of such subdivision, line or corner contained in the official plats and field notes filed of record, and in the event of any conflict the description by reference to the subdivision, line or corner of the United States public land surveys shall prevail over the description by co-ordinates.

History: En. Sec. 8, Ch. 232, L. 1965.

67-2019. Reliance on co-ordinate system not required of purchaser or mortgagee. Nothing contained in this act shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Montana Co-ordinate System.

History: En. Sec. 9, Ch. 232, L. 1965.

Separability Clause

Section 10 of Ch. 232, Laws 1965 read
"If any provision of this act shall be de-

clared invalid, such invalidity shall not affect any other portion of this act which can be given effect without the invalid portion, and to this end the provisions of the act are declared to be severable."

CHAPTER 21—SALE OR LEASE OF SUBDIVIDED LANDS

- Section 67-2101. Definition of terms.
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- 67-2126. General powers and duties.
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- 67-2132. Civil remedy.
- 67-2133. Jurisdiction.
- 67-2134. Interstate rendition.
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- 67-2136. Short title.

67-2101. Definition of terms. The word "subdivision" and "subdivided lands" as used in this act shall mean any tract of land which is hereafter divided into five (5) or more parcels, any parcel of which is less than five (5) acres in size, and which is offered for sale or lease outside the state of Montana.

History: En. Sec. 1, Ch. 191, L. 1963.

Title of Act

An act defining "subdivision" and "subdivided lands"; providing for the reg-

ulation, supervision and control of subdivisions by the state real estate commissioner and defining his duties and powers relative thereto; and providing a penalty for the violation of this act.

67-2102. Rules and regulations. The state real estate commissioner hereafter referred to as the "commissioner" may make and adopt such rules and regulations as are reasonably necessary for the enforcement of this act.

History: En. Sec. 2, Ch. 191, L. 1963.

67-2103. Notice of intention to offer subdivided lands—contents of notice. Prior to the time when subdivided lands are to be offered for sale or lease outside the state of Montana, the owner, his agent or subdivider shall notify the state real estate commissioner in writing of his intention to sell or lease such offering.

The notice of intention shall contain the following information.

- (a) The name and address of the owner.
- (b) The name and address of the subdivider.
- (c) The legal description and area of lands, together with a map showing the layout proposed and relation to existing streets or roads.
- (d) A true statement of the conditions of the title to the land, particularly including all encumbrances thereon.
- (e) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any and all forms of conveyance intended to be used.
- (f) A true statement of the provision for legal access, sewage disposal, and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.
- (g) Copies of any and all advertising, information, promotion brochures or similar material depicting the existing property or as it is to exist, which might cause or tend to induce purchase of the said property, or an interest therein, when said material is or might be circulated outside of this state.

(h) Such other information as the owner, his agent or subdivider, may desire to present.

History: En. Sec. 3, Ch. 191, L. 1963.

67-2104. Fee for filing of notice of intention. A filing fee of fifty dollars (\$50) shall accompany the notice of intention provided for in section 3 [67-2103] of this act.

History: En. Sec. 4, Ch. 191, L. 1963.

67-2105. Additional information required by commissioner. After receiving the notice of intention, the commissioner may require such additional information concerning the project as he deems necessary, for which purpose he may prepare a questionnaire for the owner, his agent or subdivider, to answer.

History: En. Sec. 5, Ch. 191, L. 1963.

67-2106. Fee for filing of questionnaire—disposition of fees. The questionnaire as provided for in section 5 [67-2105] of this act shall be accompanied by a filing fee of one hundred dollars (\$100). All fees and charges provided for by this act shall be paid to the commissioner and by him deposited with the state treasurer. The state treasurer shall place five per cent (5%) of all such fees and charges in the general fund and ninety-five per cent (95%) of all such fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay all claims for expense incurred in the administration of this act when such claims have been approved as provided by law.

History: En. Sec. 6, Ch. 191, L. 1963.

67-2107. Investigation of subdivisions—powers of commissioner. The state real estate commissioner may investigate any subdivision being offered for sale or lease under the provisions of this act. For the purpose of such investigation, the commissioner may:

1. Use and rely upon any relevant information or data concerning a subdivision obtained by it from the federal housing administration, the United States veterans administration, or any other agency having comparable duties and functions in relation to subdivisions or property therein.

2. Require reports prepared by competent authorities as to any hazard to which the subdivision may be subject or any factor which might affect the value or utility of lots or parcels within the subdivision.

3. Require evidence of compliance with the requirements of appropriate authorities.

4. Require an inspection of the subdivision to be made.

History: En. Sec. 7, Ch. 191, L. 1963.

67-2108. Findings not to be used in advertising. It shall be unlawful for any person to incorporate in any advertising material or use for any advertising purposes the results or findings of the commissioner as provided for in this act.

History: En. Sec. 8, Ch. 191, L. 1963.

67-2109. Blanket encumbrance defined. For the purpose of this act, a blanket encumbrance shall be considered to mean a trust deed or mort-

gage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under an option, contract to sell, or trust agreement.

History: En. Sec. 9, Ch. 191, L. 1963.

67-2110. Required provisions for protection of purchasers and lessees. It shall be unlawful for the owner or subdivider to offer to sell or lease or to sell or lease lots or parcels within a subdivision to persons residing out of the state of Montana unless one of the following conditions is complied with:

(a) All sums paid or advanced by purchasers shall be impounded in an escrow or other depository acceptable to the state real estate commissioner until: 1. The title or other interest contracted for whether it be title of record, equitable or other interest, is delivered to such purchaser or lessee and until: 2. A proper release is obtained from any such blanket encumbrance, or: 3. Either the owner, subdivider, purchaser or lessee defaults in his undertaking, in which event the moneys shall be paid to the party who is not in default and is entitled thereto.

(b) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the commissioner until a proper release from such blanket encumbrance is obtained and title or other interest contracted for is delivered to such purchaser or lessee.

(c) A bond in the amount of twenty-five hundred dollars (\$2,500) to the state of Montana is furnished to the state real estate commissioner for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to such terms as may be approved by the commissioner, who shall provide for the return of moneys paid or advanced by any purchaser or lessee, for or on account of purchase or lease of any such lot or parcel if the interest contracted for is not delivered or a proper release from such blanket encumbrance is not obtained; provided, however, that if such purchaser or lessee, by reason of default, is not entitled to the return of such moneys, or any portion thereof, then such bond shall be exonerated to the extent of the amount of such moneys to which such purchaser or lessee is not entitled.

History: En. Sec. 10, Ch. 191, L. 1963.

67-2111. Contracts for sale of real property in subdivisions—required contents. Every sales contract relating to the purchase of real property in a subdivision subject to the provisions of this act, shall clearly set forth the legal description of the property, the principal amount of the blanket encumbrances outstanding at the date of the contract, and the terms of the contract.

History: En. Sec. 11, Ch. 191, L. 1963.

67-2112. Notice of multiple sales or leases to one purchaser or lessee. When five or more lots or parcels within a subdivision subject to the provisions of this act, are optioned, leased or sold to another, or, when an

interest therein is acquired by one owner, lessee or optionee, the state real estate commissioner shall be notified by the parties to the transaction.

History: En. Sec. 12, Ch. 191, L. 1963.

67-2113. Inspection of records by commissioner—notice of change of address or change of depository. Records of the sale or lease of parcels within a subdivision subject to the provisions of this act, shall be subject to inspection by the state real estate commissioner and the commissioner shall be notified of any change of address affecting the location of the owner's, subdivider's or agent's records or of any change in depository for the impounding of purchasers' money in accordance with the provisions herein.

History: En. Sec. 13, Ch. 191, L. 1963.

67-2114. Orders to desist and refrain—prohibition of sales and leases—hearings. Whenever in the opinion of the state real estate commissioner any person has or is violating, or is about to violate, any of the provisions of this act, the commissioner may order the person to desist and refrain from doing so, or, if an examination of the project shows that the sale or lease would constitute misrepresentation to, or deceit or fraud of, the purchasers or lessees of lots or parcels in a subdivision, the commissioner may issue an order prohibiting the sale or lease, or either, of the property in this state. If, after such an order is made, a request for a hearing by the commissioner is filed in writing and a hearing is not held within sixty (60) days thereafter, the order is rescinded.

The hearing upon the cease, desist and refrain order shall be held in the same manner and under the same requirements and conditions as is provided in section 66-1917, Revised Codes of Montana, 1947.

History: En. Sec. 14, Ch. 191, L. 1963.

67-2115. Accrual of cause of action for violation. For the purpose of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or criminal involving any violation of this act, the cause of action shall be deemed to have accrued not earlier than the time of recording with the county recorder of the county in which the property sold or leased in violation of this act and which describes a lot or parcel so wrongfully sold or leased.

This section does not prohibit the maintenance of such action at any time during the recording of such instruments.

History: En. Sec. 15, Ch. 191, L. 1963.

67-2116. Misdemeanors enumerated. The following acts are misdemeanors:

(a) The willful violation or failure to comply with any of the provisions of this act.

(b) The willful violation, failure, omission or neglect to obey, observe or comply with any order, permit, decision, demand or requirement of the state real estate commissioner.

(c) The offering for sale or lease as an agent, salesman, or broker for a subdivider, developer, or owner or subdivided lands or a subdivision,

wherever situated, which is being offered for sale outside the state of Montana without first complying with the provisions of this act.

(d) The advertising for sale or lease in this state of a parcel in an out-of-state subdivision or in any other manner aiding an owner, subdivider, or developer of an out-of-state subdivision who has not complied with the provisions of this act, to offer within this state subdivided lands.

History: En. Sec. 16, Ch. 191, L. 1963.

Repealing Clause

Section 17 of Ch. 191, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 18 of Ch. 191, Laws 1963 read "If any clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not

effect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Effective Date

Section 19 of Ch. 191, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

67-2117. Definitions. When used in this act, unless the context otherwise requires:

(1) "disposition" includes sale, lease, assignment, or any other transaction concerning a subdivision, if undertaken for gain or profit:

(2) "offer" includes every inducement, solicitation, or attempt to encourage a person to acquire an interest in land, if undertaken for gain or profit;

(3) "person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership unincorporated association, two (2) or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity;

(4) "purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land;

(5) "subdivider" means any owner of subdivided land who offers it for disposition or the principal agent of an inactive owner;

(6) "subdivision" and "subdivided lands" mean any land which is divided or is proposed to be divided for the purpose of disposition into five (5) or more lots, parcels, units, or interests and also includes any land whether contiguous or not if five (5) or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

History: En. Sec. 1, Ch. 97, L. 1969.

Title of Act

An act providing for the registration of subdivided lands situate outside of Montana for sale or disposition within Montana, and providing requirements for such registration; naming the Montana real estate commission to administer this act; providing for certain exemptions; providing for full disclosure of material facts concerning subdivided lands offered for sale or disposal; providing for the collection and disposition of fees; providing

grounds for revocation of registration; providing for investigation and hearing procedures; providing for judicial review of administrative decisions; providing penalties for violation including civil remedies for damaged parties; providing for service of process and extradition in addition to methods already provided by law; providing for cease and desist orders for certain violations of this act; providing general powers and duties in the administration of this act; providing for annual reports by registered subdividers.

67-2118. Administrative agency. This act shall be administered by the Montana real estate commission which hereinafter is called the "agency." The agency shall charge a fee, not to exceed five hundred dollars (\$500) for each application for registration of subdivided lands received by it in accordance with this act, which shall be paid into the earmarked revenue fund to the credit of the agency and is hereby appropriated for the purposes of carrying out the provisions of this act. All expenditures of said funds by the agency under the provisions of this act shall be certified and approved by the chairman of the agency and paid by the appropriate state officials. Payment shall be made upon warrants appropriately drawn out of the proper funds. The agency shall provide a system of accounting which shall show the amount of money received therefor, and also an itemized statement of expenses in connection therewith. The agency shall have the power to make orders concerning the disbursement of the moneys in said earmarked revenue fund, including the payment of compensation and expenses of its employees and board members.

History: En. Sec. 2, Ch. 97, L. 1969.

67-2119. Exemptions. (a) Unless the method of disposition is adopted for the purpose of evasion of this act, the provisions of this act do not apply to offers or dispositions of an interest in land:

(1) by a purchaser of subdivided lands for his own account in a single or isolated transaction;

(2) if fewer than five (5) separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve (12) months;

(3) on which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within two (2) years from date of disposition;

(4) to persons who are engaged in the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging and do engage in the business of construction of buildings for resale;

(5) pursuant to court order;

(6) by any government or government agency;

(7) as cemetery lots or interests.

(b) Unless the method of disposition is adopted for the purpose of evasion of this act, the provisions of this act do not apply to:

(1) offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate;

(2) offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(3) a subdivision as to which the plan of disposition is to dispose to ten (10) or fewer persons;

(4) a subdivision as to which the agency has granted an exemption as provided in section 10 [67-2126];

(5) offers or dispositions of securities currently registered with the investment commissioner of this state; and,

(6) offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by the investment commissioner of this state.

History: En. Sec. 3, Ch. 97, L. 1969.

67-2120. Prohibitions on dispositions of interests in subdivisions. Unless the subdivided lands or the transaction is exempt by section 3 [67-2119]:

(1) no person may offer or dispose in this state of any interest in subdivided lands located without this state prior to the time the subdivided lands are registered in accordance with this act;

(2) no person may dispose of any interest in subdivided lands without this state unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement prior to the disposition.

History: En. Sec. 4, Ch. 97, L. 1969.

67-2121. Application for registration. (a) The application for registration of subdivided lands shall be filed as prescribed by the agency's rules and regulations and shall contain the following documents and information:

(1) an irrevocable appointment of the agency to receive service of any lawful process in any noncriminal proceeding arising under this act against the applicant or his personal representative;

(2) a legal description of the subdivided lands offered for registration, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests and the relation of the subdivided lands to existing streets, roads, and other off-site improvements;

(3) the states or jurisdictions in which an application for registration or similar document has been filed and any adverse order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court;

(4) the applicant's name and address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this state;

(5) the name, address, and principal occupation for the past five (5) years of every director and officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the subdivided lands as of a specified date within thirty (30) days of the filing of the application;

(6) a statement, in a form acceptable to the agency, of the condition of the title to the subdivided lands including encumbrances as of a specified date within thirty (30) days of the date of application by a title opinion of an attorney licensed to practice in this state, not a

salaries employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the agency ;

(7) copies of the instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign ;

(8) copies of the instruments by which the interest in the subdivided lands was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording ;

(9) if there is a lien or encumbrance affecting more than one (1) lot, parcel, unit, or interest a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality ;

(10) copies of instruments creating easements, restrictions, or other encumbrances, affecting the subdivided lands ;

(11) a statement of the zoning and other governmental regulations affecting the use of the subdivided lands and also of any existing tax and existing or proposed special taxes or assessments which affect the subdivided lands ;

(12) a statement of the existing provisions for access, sewage, disposal, water, and other public utilities, in the subdivision ; a statement of the improvements to be installed ; the schedule for their completion ; and a statement as to the provisions for improvement maintenance ;

(13) a narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication ;

(14) the proposed public offering statement ;

(15) any other information, including any current financial statement, which the agency by its rules or regulations requires for the protection of purchasers.

(b) If the subdivider registers additional subdivided lands to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering subdivided lands for disposition under the same promotional plan.

(c) The subdivider shall immediately report any material changes in the information contained in an application for registration.

History: En. Sec. 5, Ch. 97, L. 1969.

67-2122. Public offering statement. (a) A public offering statement shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the subdivided lands. The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules and regulations and shall include the following :

(1) the name and principal address of the subdivider ;

(2) a general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering ;

(3) the significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the subdivided lands and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the subdivided lands;

(4) a statement of the use for which the property is offered;

(5) information concerning improvements, including streets, water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, and customary utilities, and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in subdivided lands;

(6) additional information required by the agency to assure full and fair disclosure to prospective purchasers.

(b) The public offering statement shall not be used for any promotional purposes before registration of the subdivided lands and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the subdivided lands or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the agency requires it.

(c) The agency may require the subdivider to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the subdivision may be made after registration without notifying the agency and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

History: En. Sec. 6, Ch. 97, L. 1969.

67-2123. Inquiry and examination. Upon receipt of an application for registration in proper form, the agency shall forthwith initiate an examination to determine that:

(1) the subdivider can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;

(2) there is reasonable assurance that all proposed improvements will be completed as represented;

(3) the advertising material and the general promotional plan are not false or misleading and comply with the standards prescribed by the agency in its rules and regulations and afford full and fair disclosure;

(4) the subdivider has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the

United States, or any other state or foreign country within the past ten (10) years and has not been subject to any injunction or administrative order entered by any authority within the past ten (10) years restraining a false or misleading promotional plan involving land dispositions;

(5) the public offering statement requirements of this act have been satisfied.

History: En. Sec. 7, Ch. 97, L. 1969.

67-2124. Notice of filing and registration. (a) Upon receipt of the application for registration in proper form, the agency shall issue a notice of filing to the applicant. Within ninety (90) days from the date of the notice of filing, the agency shall enter an order registering the subdivided lands or rejecting the registration. If no order of rejection is entered within ninety (90) days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay.

(b) If the agency affirmatively determines, upon inquiry and examination, that the requirements of section 7 [67-2123] have been met, it shall enter an order registering the subdivided lands and shall designate the form of the public offering statement.

(c) If the agency determines upon inquiry and examination that any of the requirements of section 7 [67-2123] has not been met, it shall notify the applicant that the application for registration must be corrected in the particulars specified within ten (10) days. If the requirements are not met within the time allowed the agency shall enter an order rejecting the registration, which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty (20) days, during which time the applicant may petition for reconsideration and is entitled to a hearing.

(d) No subdivided lands shall be registered or deemed registered until the subdivider shall have filed a bond with the agency running to the state of Montana, executed by a surety company authorized to do business in this state, on a form approved by the agency, conditioned that the subdivider shall pay, to the extent of ten thousand dollars (\$10,000) for each occurrence, any judgment recovered against him for loss or damage to any person arising out of the sale or disposition in Montana of any subdivided lands, situate out-of-state.

History: En. Sec. 8, Ch. 97, L. 1969.

67-2125. Annual report. (a) Within thirty (30) days after each annual anniversary of an order registering subdivided lands, the subdivider shall file a report in the form prescribed by the rules and regulations of the agency. The report shall reflect any material changes in information contained in the original application for registration.

(b) The agency may permit the filing of annual reports within thirty (30) days after the anniversary date of the consolidated registration in lieu of the anniversary date of the original registration.

History: En. Sec. 9, Ch. 97, L. 1969.

67-2126. General powers and duties. (a) In the administration of this act, the agency shall have all of the powers and duties as stated in subsections (b), (c) and (d) of section 66-1927, R. C. M. 1947. The agency shall adopt reasonable rules and regulations relating to the administration of this act, but not inconsistent therewith, which may be amended or repealed. The rules and regulations shall include but need not be limited to:

(1) provisions for advertising standards to assure full and fair disclosure;

(2) provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for;

(3) provisions for operating procedures; and,

(4) other rules and regulations necessary and proper to accomplish the purpose of this act.

(b) The agency by rule or order, after reasonable notice and hearing, may require the filing of advertising material relating to subdivided lands prior to its distribution.

(c) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this act or a rule or order hereunder, the agency, with or without prior administrative proceedings, may bring an action in any district court of this state to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The agency is not required to post a bond in any court proceedings.

(d) The agency may intervene in a suit involving subdivided lands. In any suit by or against a subdivider involving subdivided lands, the subdivider promptly shall furnish the agency notice of the suit and copies of all pleadings.

(e) The agency may:

(1) accept registrations filed in other states or with the federal government;

(2) contract with similar agencies in this state or other jurisdictions to perform investigative functions;

(3) accept grants-in-aid from any source.

(f) The agency shall co-operate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

(g) The agency may exempt a subdivision of twenty-five (25) or fewer lots, parcels, units, or interests from the provisions of this act if it determines that the plan of promotion and disposition is primarily directed to persons in the local community in which the subdivision is situated.

History: En. Sec. 10, Ch. 97, L. 1969.

67-2127. Investigations and proceedings. (a) The agency may:

(1) make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this act or any rule or order hereunder or to aid in the enforcement of this act or in the prescribing of rules, regulations and forms hereunder;

(2) require or permit any person to file a statement in writing, under oath or otherwise as the agency determines, as to all the facts and circumstances concerning the matter to be investigated.

(b) For the purpose of any investigation or proceeding under this act, the agency or any officer designated by rule or regulation may administer oaths or affirmations, and upon its own motion or upon request of any party may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

(c) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the agency may apply to any district court of this state for an order compelling compliance.

(d) Any person directly affected by any ruling, determination, or decision of the agency or any officer or employee thereof, may appeal the same to the Montana real estate commission for hearing and review by serving written notice of appeal upon the commission chairman within fifteen (15) days after such rule, determination or decision is mailed to, or served upon, such person. Notice of appeal shall state specifically the matters that the appellant desires reviewed, but shall not act as a stay unless otherwise provided by this act. Upon receipt of notice of appeal, the chairman shall serve upon the appellant notice of time and place of said hearing not less than fifteen (15) days prior to the date of hearing, to be held in the offices of the commission in Helena, Montana, or elsewhere as the chairman shall order. All hearings shall be open to the public and conducted informally in so far as an orderly presentation will permit. The appellant, the commission chairman, or any officer or employee of the agency, or a member of the commission, may be represented by counsel and may introduce any material evidence or examine or cross-examine any person present as a witness. The commission shall consider all evidence presented or introduced under oath at the hearing and all other pertinent documents, papers or records available to it, and shall not be bound by any laws of evidence of this state. A full and complete record shall be kept of all proceedings and all testimony shall be recorded, but need not be transcribed unless the matter be further appealed. Four (4) members of the commission shall constitute a quorum, one of whom must be the chairman. No member of the commission shall hear any matter in which he has a personal interest, nor shall he repre-

sent any person or witness at the hearing. Any party to the proceedings may challenge any commissioner in writing, served upon the chairman of the commission five (5) days in advance of any scheduled appeal hearing, stating the reasons therefor, and if the commission shall find merit in the challenge, it shall disqualify the challenged member. If disqualification reduces the commission membership to less than four (4), the remaining members shall appoint disinterested people to fill the vacancies to provide a four-man hearing commission. The commission may postpone or continue a hearing from time to time as it deems necessary. As soon as possible after the hearing, the commission shall render its decision in writing, stating its findings and conclusions and showing the names of all members of the commission joining in the decision. The decision of any three (3) commissioners shall constitute the decision of the commission on any issue presented for its decision. If the appellant or his representative fails to appear at the hearing after due notice, and good cause for continuance is not shown, the commission shall render its decision upon the evidence presented to it. Copies of such decision shall be served upon all interested parties or their representatives, and shall be kept on file in the office of the commission in Helena, Montana, open to public inspection. The commission shall have continuing jurisdiction over all matters heard by it, to examine additional evidence, or to hear additional testimony, and to revise, modify, alter, amend or reverse all orders, demands, findings and decisions made by it at any time and shall not lose jurisdiction until jurisdiction has been taken by a court of competent jurisdiction in a proceeding filed in such court.

History: En. Sec. 11, Ch. 97, L. 1969.

67-2128. Cease and desist orders. (a) If the agency determines after notice and hearing that a person has :

- (1) violated any provision of this act;
- (2) directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in subdivided lands;
- (3) made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the agency;
- (4) disposed of any subdivided lands which have not been registered with the agency; or
- (5) violated any lawful order or rule of the agency; it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the agency will carry out the purposes of this act.

(b) If the agency makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the agency whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease

and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held within twenty (20) days to determine whether or not it becomes permanent.

History: En. Sec. 12, Ch. 97, L. 1969.

67-2129. Revocation. (a) A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:

(1) failed to comply with the terms of a cease and desist order;

(2) been convicted in any court subsequent to the filing of the application for registration of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(3) disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;

(4) failed faithfully to perform any stipulation or agreement made with the agency as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(5) made intentional misrepresentations or concealed material facts in an application for registration. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) If the agency finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

History: En. Sec. 13, Ch. 97, L. 1969.

67-2130. Judicial review. (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by an order pertaining to registration, a cease and desist order, an order of revocation, or any other final decision of the agency is entitled to judicial review under this act. This section does not limit utilization or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review are instituted by filing a petition in any district court of this state within thirty (30) days after mailing notice of the final decision of the agency, or, if a rehearing is requested, within thirty (30) days after the decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

(c) The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

(d) Within thirty (30) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to

the reviewing court the original or a certified copy of the entire record of the proceedings under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional cost. The court may require or permit subsequent corrections or additions to the record.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(f) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
- (2) in excess of the statutory authority of the agency;
- (3) made upon unlawful procedure;
- (4) affected by other error or law;
- (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

History: En. Sec. 14, Ch. 97, L. 1969.

67-2131. Penalties. Any person who violates any provision of this act or who willfully violates any rule or regulation adopted under it or any person who willfully, in an application for registration, makes any untrue statement of a material fact or omits to state a material fact is guilty of a felony and may be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or he may be imprisoned for not more than two (2) years, or both.

History: En. Sec. 15, Ch. 97, L. 1969.

67-2132. Civil remedy. (a) Any person who disposes of subdivided lands in violation of section 4 [67-2120], or who in disposing of subdivided lands makes an untrue statement of a material fact, or who in disposing of subdivided lands omits a material fact required to be

stated in a registration statement or public offering statement or necessary to make the statements made not misleading, is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved that the purchaser knew of the untruth or omission or that the person offering or disposing of subdivided lands did not know and in the exercise of reasonable care could not have known of the untruth or omission, or that the purchaser did not rely on the untruth or omission.

(b) In addition to any other remedies, the purchaser, under subsection (a), of this section may recover the consideration paid for the lot, parcel, unit, or interest in subdivided lands together with interest at the rate of six per cent (6%) per year from the date of payment, property taxes paid, costs, and reasonable attorneys' fees, less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, he may recover the amount that would be recoverable upon a tender of a reconveyance, less the value of the land when disposed of and less interest at the rate of six per cent (6%) per year on that amount from the date of disposition.

(c) Every person who directly or indirectly controls a subdivider liable under subsection (a), every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

(d) Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or public offering statement, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement and only if he fails to prove that he did not know and in the exercise of the reasonable care of a man in his occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(e) A tender of reconveyance may be made at any time before the entry of judgment.

(f) Any stipulation or provision purporting to bind any person acquiring subdivided lands to waive compliance with this act or any rule or order under it is void.

History: En. Sec. 16, Ch. 97, L. 1969.

67-2133. Jurisdiction. Dispositions of subdivided lands are subject to this act, and any district court of this state has jurisdiction in claims arising under this act if:

- (1) the subdivider's principal office is located in this state; or
- (2) any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state; if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

History: En. Sec. 17, Ch. 97, L. 1969.

67-2134. Interstate rendition. In the proceedings for extradition of a person charged with a crime under this act, it need not be shown that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or other state.

History: En. Sec. 18, Ch. 97, L. 1969.

67-2135. Service of process. (a) In addition to the methods of service of process provided for in the Montana Rules of Civil Procedure service may be made upon any person for any cause arising under the provisions of this act by delivering a copy of the process to the office of the agency, but it is not effective unless:

- (1) the plaintiff (which may be the agency in a proceeding instituted by it) forthwith sends a copy of the process and of the pleading by registered mail to the defendant or respondent at his last known address; and

- (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(b) If any person, including any nonresident of this state, engages in conduct prohibited by this act or any rule or order hereunder, and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct authorizes the agency to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (a).

History: En. Sec. 19, Ch. 97, L. 1969.

67-2136. Short title. This act may be cited as the Foreign Land Sales Practices Act.

History: En. Sec. 20, Ch. 97, L. 1969.

Separability Clause

Section 21 of Ch. 97, Laws 1969 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect with-

out the invalid provisions or application, and to this end the provisions of this act are severable."

Repealing Clause

Section 22 of Ch. 97, Laws 1969 repealed all acts and parts of acts in conflict therewith.

CHAPTER 22—DISPOSITION OF UNCLAIMED PROPERTY

- Section 67-2201. Definitions and use of terms.
67-2202. Property held by banking or financial organizations or by business associations.
67-2203. Unclaimed funds held by life insurance corporations.
67-2204. Deposits and refunds held by utilities.
67-2205. Undistributed dividends and distributions of business associations.
67-2206. Property of business associations and banking or financial organizations held in course of dissolution.
67-2207. Property held by fiduciaries.
67-2208. Property held by state courts and public officers and agencies.
67-2209. Miscellaneous personal property held for another person.
67-2210. Reciprocity for property presumed abandoned or escheated under the laws of another state.
67-2211. Report of abandoned property.
67-2212. Notice and publication of lists of abandoned property.
67-2213. Payment or delivery of abandoned property.
67-2214. Relief from liability by payment or delivery.
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67-2217. Sale of abandoned property.
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67-2220. Determination of claims.
67-2221. Judicial action upon determinations.
67-2222. Election to take payment or delivery.
67-2223. Examination of records.
67-2224. Proceeding to compel delivery of abandoned property.
67-2225. Penalties.
67-2226. Rules and regulations.
67-2227. Effect of laws of other states.
67-2228. Severability.
67-2229. Uniformity of interpretation.
67-2230. Short title.

67-2201. Definitions and use of terms. As used in this act, unless the context otherwise requires:

(a) "Banking organization" means any bank, national bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state.

(b) "Business association" means any corporation, other than a public corporation, joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(c) "Financial organization" means any savings and loan association, building and loan association, credit union, co-operative bank, or investment company engaged in business in this state.

(d) "Holder" means any person in possession of property subject to this act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this act.

(e) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this act, or his legal representative.

(g) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two (2) or more persons having a joint or common interest, or any other legal or commercial entity.

(h) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

History: En. Sec. 1, Ch. 244, L. 1963.

Title of Act

An act relating to the disposition of unclaimed property and making uniform the law with reference thereto; making provision for classifying such property as abandoned and setting up provisions of law for handling such property so as to protect the interests of the original owners, relieve the holders of annoyance, expense and liability, preclude multiple liability, and preserve any windfalls that may result from abandonment to the state of Montana; providing that the funds be-

coming available to the state under the provisions of this act shall be deposited in the public school fund; and providing penalties for violations of this act.

NOTE.—Uniform State Law. Sections 67-2201 to 67-2230 constitute the "Uniform Disposition of Unclaimed Property Act" approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1955 and adopted in substance in Arizona, California, Florida, Idaho, Illinois, New Hampshire, New Mexico, Oregon, Utah, Virginia, and Washington.

67-2202. Property held by banking or financial organizations or by business associations. The following property held or owing by a banking or financial organization or by business association is presumed abandoned:

(a) Any demand, savings, or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding any charges that may lawfully be withheld, unless the owner has, within seven (7) years:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(b) Any funds paid in this state toward the purchase of shares or other interest in a financial organization, or any deposit made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within seven (7) years:

(1) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(c) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, money orders, and travelers' checks, that, with the exception of travelers' checks, has been outstanding for more than seven (7) years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of travelers' checks, that has been outstanding for more than fifteen (15) years from the date of its issuance, unless the owner has within seven (7) years, or within fifteen (15) years in the case of travelers' checks, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association.

(d) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than seven (7) years from the date on which the lease or rental period expired.

History: En. Sec. 2, Ch. 244, L. 1963; amd. Sec. 1, Ch. 226, L. 1967.

Amendments

The 1967 amendment inserted "or by a business association" after "financial organization" wherever it appears in the section and substituted "money orders, and travelers' checks, that, with the exception of travelers' checks, has been outstanding for more than seven (7) years from the date it was payable, or from the date of its issuance if payable on demand,

or, in the case of travelers' checks, that has been outstanding for more than fifteen (15) years from the date of its issuance, unless the owner has within seven (7) years, or within fifteen (15) years in the case of travelers' checks," for "and travelers' checks, that has been outstanding for more than seven (7) years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within seven (7) years" after "certificates of deposit, drafts" in subsection (c).

67-2203. Unclaimed funds held by life insurance corporations. (a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven (7) years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of

the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven (7) years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

History: En. Sec. 3, Ch. 244, L. 1963.

67-2204. Deposits and refunds held by utilities. The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven (7) years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven (7) years after the date it became payable in accordance with the final determination or order providing for the refund.

History: En. Sec. 4, Ch. 244, L. 1963.

67-2205. Undistributed dividends and distributions of business associations. Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a co-operative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven (7) years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) It is held or owing by a business association organized under the laws of or created in this state; or

(b) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

History: En. Sec. 5, Ch. 244, L. 1963.

67-2206. Property of business associations and banking or financial organizations held in course of dissolution. All intangible personal property distributable in the course of a voluntary dissolution of a business

association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two (2) years after the date for final distribution, is presumed abandoned.

History: En. Sec. 6, Ch. 244, L. 1963.

67-2207. Property held by fiduciaries. All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within seven (7) years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(a) If the property is held by a business association, banking organization, or financial organization organized under the laws of or created in this state; or

(b) If it is held by a business association, banking organization, or financial organization doing business in this state, but not organized under the laws of or created in this state, and the records of the business association, banking organization, or financial organization indicate that the last known address of the person entitled thereto is in this state; or

(c) If it is held in this state by another person.

History: En. Sec. 7, Ch. 244, L. 1963.

67-2208. Property held by state courts and public officers and agencies. All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven (7) years is presumed abandoned.

History: En. Sec. 8, Ch. 244, L. 1963.

67-2209. Miscellaneous personal property held for another person. All intangible personal property, not otherwise covered by this act, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven (7) years after it became payable or distributable is presumed abandoned.

History: En. Sec. 9, Ch. 244, L. 1963.

67-2210. Reciprocity for property presumed abandoned or escheated under the laws of another state. If specific property which is subject to the provisions of sections 2, 5, 6, 7 and 9 [67-2202, 67-2205, 67-2206, 67-2207 and 67-2209] is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this act if:

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

History: En. Sec. 10, Ch. 244, L. 1963.

67-2211. Report of abandoned property. (a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act shall report to the state treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) Except with respect to travelers' checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of three dollars (\$3) or more presumed abandoned under this act;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under three dollars (\$3) each may be reported in aggregate;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the state treasurer prescribes by rule as necessary for the administration of this act.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 every three (3) years as of June 30 next preceding, but the reports of life insurance corporations, banking and financial organizations and co-operatives, shall be filed before May 1 of each year as of December 31 next preceding. The state treasurer may request that any other reports be filed each year. The state treasurer may postpone the reporting date upon written request by any person required to file a report. The state treasurer shall furnish forms for this report.

(e) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not

been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this act shall include all items of property that would have been presumed abandoned if this act had been in effect during the ten-year period preceding its effective date.

History: En. Sec. 11, Ch. 244, L. 1963; amd. Sec. 1, Ch. 21, L. 1967; amd. Sec. 2, Ch. 226, L. 1967.

Amendments

Chapter 21, Laws 1967 substituted "every three (3) years" for "of each year" after "November 1," and "reports" for "report" preceding "of life insurance corporations" and inserted "banking and financial organizations and co-operatives" after "insurance corporations" in the first sentence and added the present second and last sentences to subsection (d).

Chapter 226, Laws 1967, inserted "Except with respect to travelers' checks and money orders," at the beginning of subsection (b)(1).

Compiler's Notes

This section was amended twice by the 1967 legislature, once by Ch. 21 and once by Ch. 226. Each act amended this section in different respects, and as the amendments do not seem in conflict with each other, the compiler has made a composite section incorporating the changes as made by both acts.

67-2212. Notice and publication of lists of abandoned property. (a) Within one hundred twenty (120) days from the filing of the report required by section 11 [67-2211], the state treasurer shall cause notice to be published at least once each week for two (2) successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to Be Owners of Abandoned Property," and shall contain:

(1) The names in alphabetical order and last known addresses, if any, or person listed in the report and entitled to notice within the county as hereinbefore specified.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state treasurer.

(3) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five (65) days from the date of the second published notice, the abandoned property will be

placed not later than eighty-five (85) days after such publication date in the custody of the state treasurer to whom all further claims must thereafter be directed.

(c) The state treasurer is not required to publish in such notice any item of less than twenty-five dollars (\$25) unless he deems such publication to be in the public interest.

(d) Within one hundred twenty (120) days from the receipt of the report required by section 11 [67-2211], the state treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars (\$25) or more presumed abandoned under this act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the state treasurer, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the state treasurer to whom all further claims must be directed.

(f) This section is not applicable to sums payable on travelers' checks or money orders presumed abandoned under section 2 [67-2202].

History: En. Sec. 12, Ch. 244, L. 1963;
amd. Sec. 3, Ch. 226, L. 1967.

Amendments

The 1967 amendment added subsection (f).

67-2213. Payment or delivery of abandoned property. Every person who has filed a report as provided by section 11 [67-2211] shall within twenty (20) days after the time specified in section 12 [67-2212] for claiming the property from the holder, or in the case of sums payable on travelers' checks or money orders presumed abandoned under section 2 [67-2202] within twenty (20) days after the filing of the report, pay or deliver to the state treasurer all abandoned property specified in this report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 12 [67-2212], or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the state treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

History: En. Sec. 13, Ch. 244, L. 1963;
amd. Sec. 4, Ch. 226, L. 1967.

Amendments

The 1967 amendment inserted "or in the case of sums payable on travelers' checks

or money orders presumed abandoned under section 2 [67-2202] within twenty (20) days after the filing of the report" after "from the holder" and inserted "this" after "specified in."

67-2214. Relief from liability by payment or delivery. Upon the payment or delivery of abandoned property to the state treasurer, the state shall assume custody and shall be responsible for the safekeeping

thereof. Any person who pays or delivers abandoned property to the state treasurer under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the state treasurer pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the state treasurer shall forthwith reimburse the holder for the payment. Any holder who has paid moneys to the state treasurer pursuant to this act, and after exhausting his legal remedies, is compelled by authority of another jurisdiction to make a second payment to any other state, upon certified proof thereof and upon proof that the state treasurer was notified in writing of the claim of such other state within thirty (30) days after such claim has been asserted, the state treasurer shall refund to such holder the amount of such second payment not in excess of the amount paid to the state treasurer under this act.

History: En. Sec. 14, Ch. 244, L. 1963.

67-2215. Income accruing after payment or delivery. When property is paid or delivered to the state treasurer under this act, the owner is not entitled to receive income or other increments accruing thereafter.

History: En. Sec. 15, Ch. 244, L. 1963.

67-2216. Periods of limitation not a bar. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the state treasurer.

History: En. Sec. 16, Ch. 244, L. 1963.

67-2217. Sale of abandoned property. (a) All abandoned property other than money delivered to the state treasurer under this act shall within one (1) year after the delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment the most favorable market for the property involved. The state treasurer may decline highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three (3) weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the state treasurer pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claim-

ing through or under them. The state treasurer shall execute all documents necessary to complete the transfer of title.

History: En. Sec. 17, Ch. 244, L. 1963.

67-2218. Deposit of funds. (a) All funds received under this act, including the proceeds from the sale of abandoned property under section 17 [67-2217], shall forthwith be deposited by the state treasurer in the public school fund of the state, except that the state treasurer shall retain in the agency fund an amount not exceeding twenty-five thousand dollars (\$25,000) from which he shall make prompt payment of claims allowed by him as hereinafter provided. Before making the deposit he shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

(b) Before making any deposit to the credit of the public school fund, the state treasurer may deduct: (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges.

History: En. Sec. 18, Ch. 244, L. 1963.

67-2219. Claim for abandoned property paid or delivered. Any person claiming an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state treasurer.

History: En. Sec. 19, Ch. 244, L. 1963.

67-2220. Determination of claims. (a) The state treasurer shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(b) If the claim is allowed, the state treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History: En. Sec. 20, Ch. 244, L. 1963.

67-2221. Judicial action upon determinations. Any person aggrieved by a decision of the state treasurer or as to whose claim the state treasurer has failed to act within ninety (90) days after the filing of the claim, may commence an action in the district court of Lewis and Clark county to establish his claim. The proceeding shall be brought within ninety (90) days after the decision of the state treasurer or within one hundred eighty (180) days from the filing of the claim if the state treasurer fails to act. The action shall be tried de novo without a jury.

History: En. Sec. 21, Ch. 244, L. 1963.

67-2222. Election to take payment or delivery. The state treasurer, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any property reported which he deems to have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates.

History: En. Sec. 22, Ch. 244, L. 1963.

67-2223. Examination of records. The state treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to this act.

History: En. Sec. 23, Ch. 244, L. 1963.

67-2224. Proceeding to compel delivery of abandoned property. If any person refuses to deliver property to the state treasurer as required under this act, he shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

History: En. Sec. 24, Ch. 244, L. 1963.

67-2225. Penalties. (a) Any person who willfully fails to render any report or perform other duties required under this act shall be punished by a fine of fifty dollars (\$50) for each day such report is withheld, but not more than one thousand dollars (\$1,000).

(b) Any person who willfully refuses to pay or deliver abandoned property to the state treasurer as required under this act shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisonment for not more than six (6) months, or both, in the discretion of the court.

History: En. Sec. 25, Ch. 244, L. 1963.

67-2226. Rules and regulations. The state treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of this act and shall be represented in the enforcement of the provisions of this act by the special assistant attorney general in charge of escheated estates.

History: En. Sec. 26, Ch. 244, L. 1963.

67-2227. Effect of laws of other states. This act shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this act.

History: En. Sec. 27, Ch. 244, L. 1963.

67-2228. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

History: En. Sec. 28, Ch. 244, L. 1963.

67-2229. **Uniformity of interpretation.** This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 29, Ch. 244, L. 1963.

67-2230. **Short title.** This act may be cited as the "Uniform Disposition of Unclaimed Property Act."

History: En. Sec. 30, Ch. 244, L. 1963.

CHAPTER 23—UNIT OWNERSHIP ACT

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- 67-2337. Removal no bar to subsequent resubmission.
- 67-2338. Actions.
- 67-2339. Change of agent for service of process.
- 67-2340. Separate taxation.
- 67-2341. Exemptions.
- 67-2342. Appraisal and assessment of units.

67-2301. Short title. Sections 2 to 42 [67-2302 to 67-2342] of this act may be cited as the "Unit Ownership Act."

History: En. Sec. 1, Ch. 120, L. 1965.

References

Title of Act

Thisted v. Country Club Tower Corp.,
146 M 87, 405 P 2d 432.

An act providing for the unit ownership of multiple-unit buildings, and to be cited as the Unit Ownership Act.

67-2302. Definition of terms. As used in sections 2 to 42 [67-2302 to 67-2342] of this act, unless the context requires otherwise:

(1) "Association of unit owners" means all the unit owners acting as a group in accordance with the declaration and bylaws.

(2) "Building" means a multiple-unit building or buildings comprising a part of the property.

(3) "Common elements" means the general common elements and the limited common elements.

(4) "Common expenses" means:

(a) Expenses of administration, maintenance, repair or replacement of the common elements;

(b) Expenses agreed upon as common by all the unit owners; and

(c) Expenses declared common by sections 29 and 31 [67-2329 and 67-2331] of this act, or by the declaration or the bylaws of the particular condominium.

(5) "Declaration" means the instrument by which the property is submitted to the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

(6) "General common elements," unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) The land on which the building is located except any portion thereof included in a unit or made a limited common element by the declaration;

(b) The foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances and exits of the building;

(c) The basements, yards, gardens, parking areas and outside storage spaces;

(d) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal and incinerating;

(e) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(f) The premises for the lodging of janitors or caretakers of the property; and

(g) All other elements of the building necessary or convenient to its existence, maintenance and safety, or normally in common use.

(7) "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners, as reserved for the use of a certain unit or number of units, to the exclusion of the other units.

(8) "Majority" or "Majority of the unit owners," unless otherwise provided in the declaration, means the owners of more than fifty per cent (50 %) in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in such element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means such percentage in the aggregate of such undivided ownership.

(9) "Manager" means the manager, board of managers or other person in charge of the administration of or managing, the property.

(10) "Property" means the land, all buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which are submitted to the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

(11) "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or any other instruments or documents affecting the title to real property.

(12) "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts thereof, intended for any type of independent use, and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

(13) "Unit designation" means the number, letter or combination thereof designating a unit in the declaration.

(14) "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state.

History: En. Sec. 2, Ch. 120, L. 1965.

67-2303. Application of act—recording of declaration. In order to submit any property to the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act, the owner thereof shall record a declaration in the office of the recording officer of the county in which such property is located. The declaration shall be executed in accordance with section 14 [67-2314] of this act and acknowledged by the owner of the property.

History: En. Sec. 3, Ch. 120, L. 1965.

67-2304. Status of the unit. While the property is submitted to sections 2 to 42 [67-2302 to 67-2342] of this act, a unit in the building may be individually conveyed and encumbered and may be the subject of ownership, possession or sale and of all types of juridic acts inter vivos or mortis causa, as if it were sole and entirely independent of the other units in the building of which they form a part, and the corresponding individual titles and interests shall be recordable.

History: En. Sec. 4, Ch. 120, L. 1965.

67-2305. Ownership of unit. Each unit owner shall be entitled to the exclusive ownership and possession of his unit.

History: En. Sec. 5, Ch. 120, L. 1965.

67-2306. Common elements—interest of unit owner. Each unit owner shall be entitled to an undivided interest in the common elements in the percentage expressed in the declaration. Such percentage shall be in the approximate relation that the value of the unit at the date of the declaration bears to the then combined value of all the units having an interest in the particular common elements. Value need not conform to market value. The percentage of undivided interest of each unit owner in the common elements as expressed in a declaration shall not be altered unless all unit owners having an interest in the particular common element agree thereto and record an amendment to the declaration setting forth the altered percentage of each unit owner having an interest.

History: En. Sec. 6, Ch. 120, L. 1965.

67-2307. Common elements—undivided interest not separated from unit. (1) The undivided interest in the common elements shall not be separated from the unit to which it appertains and shall be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(2) The common elements shall remain undivided and no unit owner shall bring any action for partition or division of any part thereof, except as provided in section 36 [67-2336] of this act. Any covenant to the contrary is void.

History: En. Sec. 7, Ch. 120, L. 1965.

67-2308. Common profits and expenses. The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners according to the percentage of undivided interest of each in the common elements.

History: En. Sec. 8, Ch. 120, L. 1965.

67-2309. Certain work prohibited. A unit owner shall make no repair or alteration or perform any other work on his unit which would jeopardize the soundness or safety of the property, reduce the value thereof or impair any easement or hereditament unless the consent of all the other unit owners affected is first obtained.

History: En. Sec. 9, Ch. 120, L. 1965.

67-2310. Common elements—use by unit owner. Each unit owner may use the common elements in accordance with the purposes for which they are intended, but may not hinder or encroach upon the lawful rights of the other unit owners.

History: En. Sec. 10, Ch. 120, L. 1965.

67-2311. Maintenance, repair and replacement of common elements. (1) The necessary work of maintenance, repair and replacement of the common elements and additions or improvements to the common elements shall be carried out only as provided in the bylaws.

(2) The association of unit owners shall have the right, to be exercised by the manager, to have access to each unit as may be necessary for the maintenance, repair or replacement of the common elements, or

to make emergency repairs therein necessary for the public safety or to prevent damage to the common elements or to another unit.

History: En. Sec. 11, Ch. 120, L. 1965.

67-2312. Waiver of use of common elements—abandonment of unit. No unit owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his unit.

History: En. Sec. 12, Ch. 120, L. 1965.

67-2313. Compliance with covenants — bylaws — administrative provisions. Each unit owner shall comply with the bylaws and with the administrative rules and regulations adopted pursuant thereto, and with the covenants, conditions and restrictions in the declaration or in the deed to his unit. Failure to comply therewith shall be grounds for an action maintainable by the association of unit owners or by an aggrieved unit owner.

History: En. Sec. 13, Ch. 120, L. 1965.

67-2314. Contents of declaration. A declaration shall contain:

- (1) A description of the land.
- (2) The name by which the property shall be known and a general description of the building, including the number of stories and basements, the number of units and the principal materials of which it is constructed.
- (3) The unit designation, location, approximate area of each unit and any other data necessary for proper identification.
- (4) A description of the general common elements and the percentage of the interest of each unit owner therein.
- (5) A description of the limited common elements, if any, stating to which units their use is reserved and in what percentage.
- (6) A statement of the use for which the building and each of the units is intended.
- (7) The name of a person to receive service of process in the cases provided in section 38 [67-2338] of this act, and the residence or place of business of such person which shall be within the county in which the property is located.

(8) Any other details regarding the property that the person executing the declaration considers desirable.

History: En. Sec. 14, Ch. 120, L. 1965.

67-2315. Preliminary declaration. A preliminary declaration, setting forth as many of the particulars required by section 14 [67-2314] of this act as may then be practicable, may be recorded before construction of the building described in the declaration is completed. The preliminary declaration shall not relieve the owner from the necessity of filing the declaration as required by section 14 [67-2314] of this act.

History: En. Sec. 15, Ch. 120, L. 1965.

67-2316. Name of property—similarity prohibited. No property shall bear a name using a word which is the same as, similar to or pronounced the same as, a word in the name of any other property or subdivision in the same county, except for the words “apartment,” “motel,” “building,” “court,” “place,” or similar words.

History: En. Sec. 16, Ch. 120, L. 1965.

67-2317. Approval of declaration before recording. Before a declaration may be recorded, it must be approved by the county assessor of the county in which the property is located. No declaration shall be approved unless:

(1) The name is proper so as to comply with section 16 [67-2316] of this act; and

(2) All taxes and assessments due and payable have been paid.

History: En. Sec. 17, Ch. 120, L. 1965.

67-2318. Recording of declaration. When a declaration is made and approved as required, it shall, upon the payment of the fees provided by law, be recorded by the recording officer. The fact of recording and the date thereof shall be entered thereon. At the time of recording a declaration, the person offering it for record shall also file an exact copy, certified by the recording officer to be a true copy thereof, with the county assessor.

History: En. Sec. 18, Ch. 120, L. 1965.

67-2319. Floor plans recorded with declaration. Floor plans of the building described in a declaration shall be recorded simultaneously with the declaration. The floor plans shall show the layout of each unit including the unit designation, location and dimensions of each unit and the common areas to which each has access. There shall be attached to the floor plans a statement of the registered architect or registered professional engineer who prepared the floor plans, certifying that the plans fully and accurately depict the layout of the units and floors of the building and the date construction of the building was completed.

History: En. Sec. 19, Ch. 120, L. 1965.

67-2320. Bylaws—adoption—recording—amendment. (1) The unit owners of each property shall adopt bylaws to govern the administration of the property.

(2) A copy of the bylaws, certified by the presiding officer and secretary of the association, shall be recorded simultaneously with the declaration of the property to which the bylaws relate.

(3) An amendment of the bylaws shall not be effective unless approved by seventy-five per cent (75 %) of the unit owners and until a copy of the bylaws, as amended, certified by the presiding officer and secretary of the association of unit owners, is recorded.

History: En. Sec. 20, Ch. 120, L. 1965.

67-2321. Contents of bylaws. The bylaws shall provide for:

(1) The election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at

least one-third ($1/3$) of the directors shall expire annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of the directors; and whether or not the board may engage the services of a manager or managing agent.

(2) The method of calling meetings of the unit owners and the percentage, if other than a majority as defined by subsection (8) of section 2 [67-2302] of this act, that shall constitute a quorum.

(3) The election of a chairman, a secretary and a treasurer.

(4) The maintenance, upkeep and repair of the common elements and payment for the expense thereof including the method of approving payment vouchers.

(5) The employment of personnel necessary for the maintenance, upkeep and repair of the common elements.

(6) The manner of collecting from the unit owners their share of the common expenses.

(7) The method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common elements.

(8) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not included in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners.

(9) The method of amending the bylaws subject to subsection (3) of section 20 [67-2320] of this act.

History: En. Sec. 21, Ch. 120, L. 1965.

67-2322. Contents of deed of unit. The deed of a unit shall contain:

(1) A description of the land, the name of the property, and the recording index numbers and date of recording of the declaration.

(2) The unit designation of the unit.

(3) The use for which the unit is intended.

(4) The percentages of undivided interest in the common elements appertaining to the unit.

(5) Any further details the grantor and grantee may consider desirable.

History: En. Sec. 22, Ch. 120, L. 1965.

67-2323. Blanket mortgages and other blanket liens affecting unit at time of first conveyance. At the time of the first conveyance of each unit following the recording of the declaration, every mortgage and other lien affecting such unit including the undivided interest of the unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed and its interest in the common elements shall be released therefrom by partial release duly recorded.

History: En. Sec. 23, Ch. 120, L. 1965.

67-2324. Liens against units—release from lien—effect of part payment. (1) Subsequent to recording a declaration and while the property remains subject to sections 2 to 42 [67-2302 to 67-2342] of this act, no lien

shall arise or be effective against the property. During such period liens or encumbrances shall arise or be created only against each unit and the undivided interest in the common elements appertaining thereto, in the same manner and under the same conditions as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership.

(2) No labor performed or materials furnished with the consent or at the request of a unit owner, his agent, contractor or subcontractor, shall be the basis for the filing of a mechanic's or materialman's lien against the unit of any other unit owner not consenting to or requesting the labor to be performed or the materials to be furnished, except that consent shall be considered given by the owner of any unit in the case of emergency repairs thereto performed or furnished with the consent or at the request of the manager.

(3) If a lien becomes effective against two or more units, the owner of each unit subject to such a lien shall have the right to have his unit released from the lien by payment of the amount of the lien attributable to his unit. The amount of the lien attributable to a unit and the payment required to satisfy such a lien, in the absence of agreement, shall be determined by application of the percentage established in the declaration. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any unit and the undivided interest in the common element appertaining thereto not so released by payment, satisfaction or discharge.

History: En. Sec. 24, Ch. 120, L. 1965.

67-2325. Records of receipts and expenditures—availability for examination. The manager shall keep detailed accurate records in chronological order, of the receipts and expenditures affecting the common elements, itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours of week days.

History: En. Sec. 25, Ch. 120, L. 1965.

67-2326. Claim for common expenses—priority of lien—contents of claim—filing and recording. (1) Whenever an association of unit owners, acting through its manager, furnishes to a unit any services, labor or material lawfully chargeable as common expenses, the association of unit owners, upon complying with subsection (2) of this section, shall have a lien upon the individual unit and the undivided interest in the common elements appertaining to such unit for the reasonable value of such common expenses and the lien shall be prior to all other liens or encumbrances upon the unit except:

- (a) Tax and assessment liens, and
- (b) A first mortgage or trust indenture of record.

(2) An association of unit owners claiming the benefits of subsection (1) of this section shall record in the county in which the unit or some part thereof is located a claim containing a true statement of the account

due for such common expenses after deducting all just credits and offsets; the name of the owner of the unit, or reputed owner, if known; a description of the property where the common expenses were furnished and the designation of the unit, sufficient for identification.

(3) The claim shall be verified by the oath of some person having knowledge of the facts and shall be filed with and recorded by the recording officer in the book kept for the purpose of recording liens filed under section 45-501. The record shall be indexed as deeds and other conveyances are required by law to be indexed.

History: En. Sec. 26, Ch. 120, L. 1965.

67-2327. Unpaid common expenses—foreclosure of lien or action for money judgment. The proceedings to foreclose liens created by section 26 [67-2326] of this act shall conform as nearly as possible to the proceedings to foreclose liens created by section 45-501. The lien may be enforced by the manager acting on behalf of the association of unit owners. An action to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the claim for common expenses.

History: En. Sec. 27, Ch. 120, L. 1965.

67-2328. Foreclosure of lien for unpaid common expenses—payment of rent—appointment of receiver—bid by manager at foreclosure sale. In any foreclosure suit against a unit, the unit owner shall be required to pay a reasonable rental for the unit, if so provided in the bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the rent. The manager, acting on behalf of the unit owners, shall have power, unless prohibited by the declaration, to bid in the unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

History: En. Sec. 28, Ch. 120, L. 1965.

67-2329. Foreclosure of first mortgage or trust indenture—liability of purchaser at foreclosure sale for unpaid share of common expenses. Where the purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage or trust indenture, such purchaser, his successors and assigns, shall not be liable for any of the common expenses chargeable to such unit which became due prior to the acquisition of title to such unit by such purchaser. Such unpaid share of common expenses shall be a common expense of all the unit owners including such purchaser, his successors and assigns.

History: En. Sec. 29, Ch. 120, L. 1965.

67-2330. Joint and several liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance of a unit; the grantee shall be jointly and severally liable with the grantor for all unpaid charges against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the amounts paid by the grantee therefor. However,

upon request of a prospective purchaser the manager shall make and deliver a statement of the unpaid charges against the prospective grantor, and the grantee in that case shall not be liable for, nor shall the unit when conveyed be subject to, a lien filed thereafter for any unpaid charges against the grantor in excess of the amount therein set forth.

History: En. Sec. 30, Ch. 120, L. 1965.

67-2331. Insurance of building. The manager, as trustee for the unit owners, shall, if required by the declaration, the bylaws or by a majority of the unit owners, insure the building against loss or damage by fire and such other hazards as shall be required, without prejudice to the right of each unit owner to insure his own unit for his own benefit. The premiums for such insurance on the building are common expenses.

History: En. Sec. 31, Ch. 120, L. 1965.

67-2332. Removal of property from the provisions of the Unit Ownership Act—transfer of liens. (1) All of the unit owners may remove a property from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act by executing and recording an instrument to that effect if the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner in the property after removal from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

(2) The tax collector for any taxing unit having a lien, for taxes or assessments, shall have authority to consent to such a transfer of any tax or assessment lien.

History: En. Sec. 32, Ch. 120, L. 1965.

67-2333. Obsolete property—renewal and restoration—sale—removal from provisions of the Unit Ownership Act. Ninety per cent (90 %) of the unit owners may agree that the property is obsolete in whole or in part and whether or not it shall be renewed and restored or sold and the proceeds of sale distributed. If ninety per cent (90 %) of the unit owners agree to renew and restore the property, the expense thereof shall be paid by all the unit owners as common expenses. If ninety per cent (90 %) of the unit owners agree to sell the property, the property shall be considered removed from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

History: En. Sec. 33, Ch. 120, L. 1965.

67-2334. Damage to property—decision not to repair or rebuild—removal from the provisions of the Unit Ownership Act. If within sixty days (60) after the date of the damage to or destruction of all or part of the property, the association of unit owners does not decide to repair, reconstruct or rebuild, the property shall be considered removed from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

History: En. Sec. 34, Ch. 120, L. 1965.

67-2335. Removal of property from the provisions of the Unit Ownership Act—ownership in common—liens. If the property is removed from

the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act, as provided by sections 32, 33 and 34 [67-2332, 67-2333 and 67-2334] of this act, the property shall be considered owned in common by all the unit owners. The percentage of undivided interest of each unit owner in the property owned in common shall be the same as the percentage of undivided interest previously owned by such owner in the common elements. Liens affecting any unit shall be liens, in accordance with the then existing priorities, against the undivided interest of the unit owner in the property owned in common.

History: En. Sec. 35, Ch. 120, L. 1965.

67-2336. Removal of property from the provisions of the Unit Ownership Act—action for partition—disposition of net proceeds of sale. If the property is removed from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act, as provided in sections 32, 33 and 34 [67-2332, 67-2333 and 67-2334] of this act, it shall be subject to an action for partition at the suit of any unit owner. The net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among the unit owners in proportion to their respective undivided interests after first paying out of the respective shares of the unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each unit owner.

History: En. Sec. 36, Ch. 120, L. 1965.

67-2337. Removal no bar to subsequent resubmission. The removal of the property from the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act, shall in no way bar its resubmission.

History: En. Sec. 37, Ch. 120, L. 1965.

67-2338. Actions. Actions may be brought on behalf of two or more of the unit owners, as their respective interests may appear, by the manager with respect to any cause of action relating to the common elements or more than one unit. Service of process on two or more unit owners, in any action relating to the common elements or more than one unit, may be made on the person designated in the declaration to receive service of process or in duplicate on the recording officer of the county in which the declaration is filed. The recording officer shall promptly send a copy of the document served by certified or registered mail to the person designated in the declaration to receive service of process. At the time of service on the recording officer, the serving party shall pay to the recording officer a fee of ten dollars (\$10), which shall be a taxable disbursement.

History: En. Sec. 38, Ch. 120, L. 1965.

67-2339. Change of agent for service of process. If the association of unit owners wishes to designate a person other than the one named in the declaration to receive service of process in the cases provided in section 38 [67-2338] of this act, it shall record an amendment to the declaration. The amendment shall be certified by the presiding officer and the secretary of the association of unit owners, and shall state the name of the successor with his residence or place of business as required by

subsection (7) of section 14 [67-2314] of this act and that the person named in the amendment was designated by resolution duly adopted by the association of unit owners.

History: En. Sec. 39, Ch. 120, L. 1965.

67-2340. Separate taxation. (1) Each unit with its percentage of undivided interest in the common elements shall be considered a parcel of real property subject to separate assessment and taxation by any taxing unit in like manner as other parcels of real property. Neither the building, the property nor any of the common elements shall be considered a parcel for purposes of taxation.

(2) In determining the true cash value of a unit with its undivided interest in the common elements, the county assessor may use the percentage of undivided interest in the common elements appertaining to a unit as expressed in the declaration.

History: En. Sec. 40, Ch. 120, L. 1965.

67-2341. Exemptions. Exemptions from executions and real property taxes apply to the owner of each unit or to the individual units as the case may be.

History: En. Sec. 41, Ch. 120, L. 1965.

67-2342. Appraisal and assessment of units. The state board of equalization shall have the authority to make rules and regulations prescribing methods best calculated to secure uniformity according to law in the appraisal and assessment of units constituting part of a property submitted to the provisions of sections 2 to 42 [67-2302 to 67-2342] of this act.

History: En. Sec. 42, Ch. 120, L. 1965.

TITLE 68—PUBLIC EMPLOYEES' RETIREMENT ACT

- Chapter 1. Purpose of act—definitions, 68-102.
2. Retirement system created—who are members, 68-203.
 3. Contracts between municipal corporations, counties and public agencies, 68-301.
 4. Cost of service, how borne—change of status—membership—retirement fund, 68-405.
 5. Board of administration—powers and duties, 68-501.
 7. Management of retirement fund, 68-701 to 68-710.
 8. Retirement—compulsory—voluntary, 68-801.
 9. Service and disability retirement allowances, 68-901.
 10. Reinstatement—reduction of allowance—optional modification of allowances, 68-1001, 68-1004.
 11. Death benefits, 68-1101.
 13. Miscellaneous provisions, 68-1307.
 14. Game wardens' retirement system, 68-1401 to 68-1429.

CHAPTER 1—PURPOSE OF ACT—DEFINITIONS

Section 68-102. Definitions.

68-102. Definitions. The following words and phrases used in this act, unless a different meaning is plainly indicated in the context, shall have the following meanings:

(a) to (j). * * * [Same as parent volume.]

(k) "State service" shall mean service rendered as an employee, hired or appointed, of the state or its university or any of the colleges, schools, components or units thereof for the purpose of this act, service rendered as an employee of any contracting city for compensation, and, for the purposes of this act, a member shall be considered as being in "state service" only while he is receiving compensation from the state, or its university as aforesaid or the contracting city for such service, except as provided in subdivision (f) of section 68-501, or, while serving as a member of the legislative assembly or as lieutenant governor of the state of Montana whether or not he receives compensation from the state.

(l). * * * [Same as parent volume.]

(m) "Prior service" shall mean all state service rendered before the first day of July, 1945; and all state service rendered as an employee of a contracting city before the effective date of the city's participation in the retirement system, and allowable as provided in subdivision (h), section 68-501. Employees of a contracting city shall receive credit for prior service only if the election of the contracting city to participate in the Public Employees' Retirement Act is filed with the board on or before, but not after July 1, 1950. Notwithstanding the sentence preceding, "prior service" as applied to a person, employed by the state, including the university, who became a member while employed on a part-time basis, because of amendments to this retirement act, or as applied to a person who became a member prior to said amendments, because of a change in

the employment status to a full-time basis, shall mean all state service rendered before the effective date of said membership. Prior service includes all prior service as a member of the legislative assembly or as lieutenant governor of the state of Montana. With respect to the optional retirement provisions set forth in section 68-901 (m), R. C. M. 1947, "prior service" shall mean all service rendered before July 1, 1945.

(n) "Continuous service" as applied to "prior service," except as to a member of the legislative assembly or a lieutenant governor of the state of Montana, shall mean all prior service, regardless of interruptions in such service, and as applied to service as a member shall mean uninterrupted employment in state service except as provided by subdivision (h) section 68-501, and, except that when for any cause whatever, a member discontinues state service but subsequently re-enters such service within three (3) years from the date of the discontinuance, such interruption shall not be deemed to break the continuity of service.

(o). * * * [Same as parent volume.]

(p) "Compensation," except as applied to a member of the legislative assembly or a lieutenant governor of the state of Montana, electing the optional retirement provisions of section 68-901 (m), R. C. M. 1947, shall mean the remuneration paid in cash out of funds controlled by the state, the university or the contracting city, plus the monetary value as determined by the board of administration, of living quarters, board, lodging, fuel, laundry and other advantages of any nature furnished by the state, the university, or the contracting city to a member, in payment of services.

(q) "Compensation earnable" by a member, except as applied to a member of the legislative assembly or a lieutenant governor of the state of Montana, shall mean the average monthly compensation as determined by the board upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, it being assumed that during any absence said member was in the position held by him at the beginning of the absence: and provided that compensation received by a member subsequent to July 1, 1952, in excess of five thousand dollars (\$5,000.00) per annum may be used as a basis of compensation for the purpose of this retirement system if (a) he contributes normal contributions on the excess of such salary subsequent to July 1, 1952, over five thousand dollars (\$5,000.00) to his individual account in the annuity savings fund and (b) he contributes three per cent (3%) of the excess of his salary subsequent to July 1, 1952, over five thousand dollars (\$5,000.00) to the pension accumulation fund of the retirement system.

(r) "Final compensation" shall mean the average annual compensation earnable by a member during any three (3) consecutive years upon which normal contributions have been made, said years to be chosen by the member. A member of the legislative assembly, a speaker of the house of representatives and a lieutenant governor of the state of Montana electing the optional retirement provisions of section 68-901 (m), R. C. M. 1947, may include as annual compensation all or any portion

of the product of his compensation per day as a member, speaker or president of the senate multiplied by three hundred sixty (360) for the purpose of computing his final compensation if he otherwise complies with the provisions of section 68-901 (m), R. C. M. 1947.

(s) to (ah). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 212, L. 1945; amd. Sec. 1, Ch. 297, L. 1947; amd. Sec. 1, Ch. 186, L. 1951; amd. Sec. 1, Ch. 92, L. 1955; amd. Sec. 1, Ch. 246, L. 1959; amd. Sec. 1, Ch. 271, L. 1969.

Amendments

The 1969 amendment, in subdivision (k), added "or, while serving * * * com-

pensation from the state"; in subdivision (m), added the last two sentences; in subdivision (n), inserted "except as to a member * * * state of Montana"; in subdivision (p), inserted "except as applied * * * section 68-901 (m), R. C. M. 1947"; in subdivision (q), inserted "except as applied * * * state of Montana"; and in subdivision (r), added the last sentence.

CHAPTER 2—RETIREMENT SYSTEM CREATED—WHO ARE MEMBERS

Section 68-203. Who are ineligible to membership in system.

68-203. Who are ineligible to membership in system. The following employees shall not become members of the retirement system:

(a) to (j). * * * [Same as parent volume.]

(k) Employees of county hospitals or county rest homes in the sixth and seventh class counties unless they elect to file with the board of administration an election in writing to become members.

History: En. Sec. 5, Ch. 212, L. 1945; amd. Sec. 2, Ch. 297, L. 1947; amd. Sec. 3, Ch. 92, L. 1955; amd. Sec. 2, Ch. 246, L. 1959; amd. Sec. 1, Ch. 150, L. 1967.

Amendments

The 1967 amendment added subdivision (k).

Effective Date

Section 2 of Ch. 150, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 24, 1967.

CHAPTER 3—CONTRACTS BETWEEN MUNICIPAL CORPORATIONS, COUNTIES AND PUBLIC AGENCIES

Section 68-301. Contracts with municipal corporations—election by employee to participate.

68-301. Contracts with municipal corporations—election by employee to participate. After receiving from the board of administration, a quotation of the approximate contribution provided for in section 68-602, any municipal corporation in the state may participate in the public employees' retirement system, making its employees members of said system, by contract entered into between the legislative body of said municipal corporation and the board of administration of the said retirement system, subject to the provisions of this act. Said contract may include any provisions consistent with this act, necessary in the administration of the retirement system as it affects said employees and municipal corporation.

The approval and termination of said contract shall be subject to the following provisions, in addition to the other provisions of this act:

(a) to (c). * * * [Same as parent volume.]

(d) Any employee who has been in the employment of an incorporated city or town of this state continuously for a period of at least two (2) years, and which incorporated city or town is not participating in the public employees' retirement system of this state, may advise the legislative body of the city or town, in writing, that he wishes to participate in such system. The legislative body shall, within thirty (30) days after receipt of such written request, adopt the resolution of intention and take such other action as provided for in subsection (a) of this act.

History: En. Sec. 6, Ch. 212, L. 1945; Amendment
amd. Sec. 1, Ch. 119, L. 1965.

The 1965 amendment added subsection (d).

CHAPTER 4—COST OF SERVICE, HOW BORNE—CHANGE OF STATUS—MEMBERSHIP—RETIREMENT FUND

Section 68-405. Fund abolished.

68-405. Fund abolished. The "public employees' retirement fund" is hereby abolished. All contributions paid into the retirement system as the employer agency portion from the state, counties, cities, towns, school districts or other public agencies or political subdivisions shall constitute a pooled or mingled account in the agency fund for payment of all claims made and approved. Whenever the words "retirement fund" appear in this act they shall be taken to mean the public employees' retirement account in the agency fund.

History: En. Sec. 13, Ch. 212, L. 1945;
amd. Sec. 4, Ch. 297, L. 1947; amd. Sec.
197, Ch. 147, L. 1963.

Amendment

The 1963 amendment completely rewrote this section. For previous text, see parent volume.

CHAPTER 5—BOARD OF ADMINISTRATION—POWERS AND DUTIES

Section 68-501. Board of administration.

68-501. Board of administration. The board of administration shall consist of five (5) members appointed by the governor, three (3) of which members shall be public employees and shall be members of the retirement system, and two (2) of which shall be members at large. Terms of office shall be for five (5) years provided, however, that those first appointed after this act takes effect shall be for terms, respectively, of one (1), two (2), three (3), four (4), and five (5) years but their successors shall hold office for terms of five (5) years; provided not more than one (1) employee member of the retirement board shall be an employee of the same department, bureau or agency of the state or contracting public agency. Members of the board shall be paid their actual and necessary expenses and those members of the board who are not members of the public employees' retirement system shall be entitled to receive in addition to

actual and necessary expenses compensation at the rate of ten dollars (\$10.00) per day.

The attorney general is hereby designated legal counsel for the board.

(a) to (d). * * * [Same as parent volume.]

(e) The board of administration shall fix and determine how much service rendered in any fiscal year shall be the equivalent of a year of service and parts thereof, but shall credit one (1) year for two hundred and fifty (250) or more days of service rendered by employees on a per diem basis and one (1) year for ten (10) months or more of service rendered by employees on a monthly basis, but not more than [one] (1) year for all service in any fiscal year. In determining the credit to be granted for service rendered on a part-time basis, for purposes of calculating retirement allowances, the service shall be reduced to a full-time basis according to the service required, in the next preceding sentence, for credit for one (1) year of service. In calculating benefits based on service so determined, except in calculating the additional pension provided in subdivision (g) of section 68-901 compensation earnable shall be taken as the compensation which would be earnable if the employment had been on a full-time basis, and with a compensation derived by multiplying the member's compensation by ratio of full time to the time he was required by his employment to engage in his duties. In calculating the credit to be granted for service rendered on a part-time basis, for purposes of determining qualifications for retirement, and of calculating benefits payable upon death before retirement, the service required in this paragraph for credit for a year of service shall not be used, but instead, a year of service shall be credited for each year during which the member was employed throughout the year on a part-time basis and was engaged in his duties the full amount of time he was required by his employment to be so engaged. Credit for fractional years will be granted to the extent of the fraction derived by dividing the time during which the member was engaged in his duties within the year, by the time he was required by his employment to be so engaged. A member of the legislative assembly and a lieutenant governor of the state of Montana shall, for purposes of calculating retirement allowances and benefits be credited with a year of service for each year so served. Credit for fractional years shall be granted on the basis of the fraction derived by dividing the number of days so served by 250.

(f) Time during which a member is absent from public service without compensation shall not be allowed in computing service; except that time during which a member is a member of the legislative assembly or a lieutenant governor of the state of Montana shall be considered as time spent in public service for the purpose of qualification for and calculation of all benefits provided for in this act; except that time during which a member is absent from public service by reason of having been ordered on duty with the armed forces of the United States, or by reason of voluntary service by the member in said forces or on ships operated by or for the United States government, or by members assigned directly to the Department of War or Defense for duties pursuant to the national

defense efforts, having been granted a leave of absence by the agency, department of state, county or city under which said member is employed for such purpose, either during a war involving the United States as a belligerent or in any other national emergency, and for ninety (90) days thereafter shall be considered as time spent in public service, for the purpose of qualification for retirement and death benefits, but not for calculation of retirement benefits unless the member elects to contribute and contributes under the retirement system. Any member so absent and until his return within the said ninety (90) days may resign from the system. Any member so absent shall have the right to contribute to said system, either during his service with the armed forces of the United States or in the merchant marine of the United States, and ninety (90) days thereafter or upon his return to the state service, at times and in a manner fixed by the board of administration, amounts equal to the contribution which would have been made by him to the system on the basis of his compensation earnable at the commencement of his absence. If he does so contribute he shall receive credit for public service for such time in the same manner as if he had not been absent from public service. Whenever a member elects to continue his contributions, the state or the contracting city, or county or other agency shall thereupon contribute an amount equal to that which it would have contributed under section 68-1307 or under the contract between the board and the legislative body, as the case may be, if the member had not been absent from state service.

Any member so absent or any member absent from state service by reason of having been ordered by an authorized official of the state of Montana or the United States, to duties outside state service, shall be paid upon his request, his accumulated contributions. Such payment shall terminate any election by said member under this section to contribute.

Time during which a member is absent from public service by reason of injury or illness determined within one (1) year after the end of such absence as arising out of and in the course of his employment, shall be considered as spent in public service, for the purpose of qualification for retirement and death benefits, but not for the calculation of retirement benefits, except as he received compensation, as defined in this act and as distinguished from disability indemnity under the Workmen's Compensation Act during the absence, and then only to the extent of compensation received.

(g). * * * [Same as parent volume.]

(h) Credit for prior service shall be granted to each person other than persons who are employees of the university or of a contracting city at the time of becoming members of the retirement system, who has rendered such service as defined in this act, and who has become a member of the retirement system on January 1, 1946, or within three (3) years after last rendering prior service. Credit for prior service shall be granted to each person who is employed by the university at the time of becoming a member of the retirement system regardless of whether he

had been retired under the system prior to the effective date hereof, who has rendered such service as defined in this act, and who has become a member of the retirement system on January 1, 1946, or within three (3) years after last rendering prior service.

Credit for prior service shall be granted to each person who is employed by a contracting city at the time of becoming a member of the system, who has rendered such service as defined in this act, and who has become a member of the retirement system within three (3) years after last rendering prior service. Notwithstanding the three (3) sentences next preceding, credit for prior service shall be granted to each person employed by the state including the university, who became a member while employed on a part-time basis, because of amendments to this retirement act, or who became a member prior to said amendments, because of a change in status to a full-time basis. The credit for prior service to be granted persons employed by a contracting city who are included under the retirement system shall be established by contract between the board and the legislative body of such city; and such credit as may be granted to a person shall be in the form of a percentage, not to exceed the analogous percentage applicable to employees of the state, for each year of prior service. Prior service so credited shall be the basis for a retirement allowance or benefit as provided in this act only if the membership in the retirement system continues unbroken until retirement or retirement allowance or until the granting of such other benefit; provided, that termination of membership by withdrawal of accumulated contributions followed by the redeposit of such contributions upon re-entrance into public service as herein provided shall not constitute a break in membership, but this section shall not be construed to entitle any person to credit as prior service for time during which he was not in public service as defined in this act.

Credit for any prior service, not previously granted, shall be granted to a member upon request for retirement provided that the member has a total of not less than ten (10) years of creditable state service of which not less than three (3) years have been as a contributing member of the retirement system and the retirement allowance does not include credit for all state service prior to July 1, 1945, or in the case of a contracting city prior to the date of the contract, or July 1, 1947, whichever is earlier. Credit for prior service shall be granted to a person who has served as a member of the legislative assembly or as a lieutenant governor of the state of Montana. Proper certification of such service must be furnished.

(i) to (l). * * * [Same as parent volume.]

History: En. Sec. 14, Ch. 212, L. 1945; amd. Sec. 5, Ch. 297, L. 1947; amd. Sec. 4, Ch. 186, L. 1951; amd. Sec. 1, Ch. 224, L. 1951; amd. Sec. 1, Ch. 225, L. 1953; amd. Sec. 4, Ch. 92, L. 1955; amd. Sec. 1, Ch. 233, L. 1965; amd. Sec. 2, Ch. 271, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed word "one" in subdivision (e).

Amendments

The 1965 amendment inserted "or by members assigned directly to the Department of War or Defense for duties pur-

suant to the national defense efforts, having been granted a leave of absence by the agency, department of state, county or city under which said member is employed for such purpose" after "United States government" in the first sentence of the first paragraph of subdivision (f).

The 1969 amendment, in subdivision (e), added the last two sentences; in subdivision (f), inserted "except that time during which a member is a member of the legislative assembly * * * provided for in this act" near the beginning; and in

subdivision (h), inserted the second from the last sentence of the third paragraph.

Repealing Clause

Section 2 of Ch. 233, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 233, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

CHAPTER 7—MANAGEMENT OF RETIREMENT FUND

Section 68-701. Management of retirement fund.

68-702. Normal rate of contribution.

68-704. Deduction of members' contributions from state salaries.

68-705. Deduction of members' contributions from city payrolls.

68-706. Voluntary additional contributions by member.

68-707. Annual membership fee.

68-708. Withdrawal of contributions by member terminating service before retirement.

68-709. Redeposit of withdrawn contributions—reinstatement of membership.

68-710. Dormant accounts transferred to pension accumulation fund.

68-701. Management of retirement fund. The retirement fund shall be managed as follows:

(a) The board of administration shall have exclusive control of the administration of said fund except as otherwise provided.

(b) The said fund shall be invested by the state board of land commissioners as part of the long term investment fund.

(c) The board of administration shall deposit monthly in the state treasury all amounts received by it as provided in this section and section 68-1307.

(d) The state treasurer shall be custodian of the retirement fund, subject to the exclusive control of the board of administration as to the administration thereof and the state board of land commissioners as to the investment thereof. All payments from said fund shall be made by him only upon vouchers signed by two (2) board members designated by the board of administration. A duly attested copy of a resolution of the board of administration designating such persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer as his authority for making payments upon such vouchers. No voucher shall be drawn unless it has previously been authorized by resolution of the board of administration.

(e) Interest earned on any cash deposit in a bank by the state treasurer and income on other assets constituting a part of the said fund shall be paid into said fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year, in excess of the interest credited to contributions during said year shall be retained in said fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

(f) Except as herein provided, no member and no employee of the board of administration shall have any interest direct, or indirect, in the making of any investment, or in the gains or profits accruing therefrom. And no member or employee of the said board directly or indirectly, for himself or as an agent or partner of others, shall borrow any of its funds or deposits, nor shall any such member or employee in any manner use the same except to make such current and necessary payments as are authorized by said board; nor shall any member or employee of said board become an endorser or surety as to, or in any manner an obligor for investments by the board.

History: En. Sec. 18, Ch. 212, L. 1945; amd. Sec. 6, Ch. 297, L. 1947; amd. Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; amd. Sec. 3, Ch. 246, L. 1959; amd. Sec. 1, Ch. 222, L. 1967; amd. Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 222 and once by Ch. 227. Neither amendatory act mentioned nor, with a minor exception, incorporated the changes made by the other. Since the two amendments do not appear to conflict,

the compiler has made a composite section incorporating the changes made by both acts.

Amendments

Chapter 222, Laws 1967, corrected a minor typographical error in subdivision (f) and made other changes described in the amendment notes to secs. 68-702 to 68-710.

Chapter 227, Laws 1967, corrected a minor typographical error in subdivision (f) and redesignated former subdivisions (g) to (o) as separate sections.

68-702. Normal rate of contribution. The normal rate of contribution of all members shall be equal to five and seventy-five one hundredths per cent (5.75%) of the gross compensation earned.

History: En. Sec. 18 (g), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (g), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; redcs. 68-702, Sec. 1, Ch. 222, L. 1967; amd. Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 222 and once by Ch. 227. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made

a composite section incorporating the changes made by both amendatory acts.

An amendment of section 68-702 is mentioned in the Title of Ch. 271, Laws 1969; there is no amendment contained in the body of the act.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-702.

Chapter 227, Laws 1967, completely rewrote this section. For previous version, see subdivision (g), sec. 68-701, parent volume.

68-703. Repealed—Chapter 227, Laws of 1967.

Repeal

This section (Sec. 18 (h), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (h), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; Sec. 68-703 as redcs. by Sec.

1, Ch. 222, L. 1967), relating to the amount receivable on retirement, was repealed by its omission from the amendment of sec. 68-701 made by Sec. 1, Ch. 227, L. 1967. For present law, see sec. 68-901.

68-704. Deduction of members' contributions from state salaries. The board of administration shall certify to the head of each office or department of the state and to the registrar of the university the normal rate of contribution as provided in this act for each member in such office, department, or the university, respectively. The head of each office or department of the state shall apply such rate of contribution to the com-

pensation of each member, and shall certify to the state auditor on each and every payroll the amount to be contributed and shall furnish immediately to the board of administration a copy of each and every such payroll; and each such amount shall be deducted by the head of each office or department and shall be remitted to the board. The registrar of the university shall apply the rate of contribution certified to him by the board to the compensation of each member employed by the university and the contributions so determined shall be deducted by the registrar of the university from the compensation of each such member; each such amount shall be remitted to the board and the registrar of the university shall furnish to the board a copy of each and every salary roll and payroll from which such amounts have been deducted. Each contribution deducted and remitted to the board shall be credited by the board, together with regular interest, to an individual account of the member for whom the contribution was made. Payment of salaries or wages less such contribution shall be full and complete discharge and acquittance of all claims and demands whatsoever for the service rendered by members during the period covered by such payment, except their claims to the benefits to which they may be entitled under the provisions of this act.

History: En. Sec. 18 (i), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (i), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; amd. Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; amd. & redes. 68-704, Sec. 1, Ch. 222, L. 1967; redes. 68-701 (h), Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 222 and once by Ch. 227. Neither amendatory act mentioned nor incorporated the changes made by the other. The only apparent conflict between the two amendatory acts is in the

number assigned to the section; the compiler has followed Ch. 222 in this respect since that chapter contained a comprehensive renumbering of the entire chapter. This section also contains the other amendment made by Ch. 222, Laws 1967.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-704 and deleted the words "From and after July 1, 1955" at the beginning of the section.

Chapter 227, Laws 1967, redesignated this section as subdivision (h), section 68-701.

68-705. Deduction of members' contributions from city payrolls. The board of administration shall certify to the city clerk, or other officer designated by the legislative body, of each contracting city the rate of contribution as provided in this act for each member included under the retirement system respectively. The city clerk, or other officer, shall apply the rate of contribution certified to him by the board to the compensation of each member included in the retirement system and the contribution so determined shall be deducted by the city clerk, or other officer, from the compensation of each such member; each such amount shall be remitted to the board and the city clerk or other officer, shall furnish to the board a copy of each and every salary roll and payroll from which such amounts have been deducted. Each contribution deducted and remitted to the board shall be credited by the board, together with regular interest, to an individual account of the member for whom the contribution was made. Payment of salaries or wages less such contribution shall be full and complete discharge and acquittance of all claims to the benefits to which they may be entitled under the provisions of this act.

History: En. Sec. 18 (j), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (j), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; amd. Sec. 5, Ch. 92, L. 1955; Sec.

3, Ch. 246, L. 1959; amd. & redes. 68-705, Sec. 1, Ch. 222, L. 1967; redes. 68-701 (i), Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 222 and once by Ch. 227. Neither amendatory act mentioned nor incorporated the changes made by the other. The only apparent conflict between the two amendatory acts is in the numbering of the section; the compiler has followed Ch. 222 in this respect since

that chapter contained a comprehensive renumbering of the entire chapter. This section also contains the other amendment made by Ch. 222, Laws 1967.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-705 and deleted the words "From and after July 1, 1955" at the beginning of the section.

Chapter 227, Laws 1967, redesignated this section as subdivision (i) of section 68-701.

68-706. Voluntary additional contributions by member. Subject to the rules and regulations to be established and promulgated by the board of administration, any member may elect to contribute at rates in excess of those provided for in sections 68-704 and 68-705, for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting city any additional financial obligation. The provisions of subdivisions (f) and (g) of section 68-203 shall apply also to additional contributions. The board, upon application shall furnish to such member information concerning the nature and amount of additional benefits to be provided by such additional contributions.

History: En. Sec. 18 (k), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (k), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; amd. & redes. 68-706, Sec. 1, Ch. 222, L. 1967; amd. & redes. 68-701 (j), Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 222 and once by Ch. 227. Both amendments involved redesignation of the section and the change of internal references to other sections. Since the changes made by Ch. 222 were part of a

comprehensive renumbering of the entire chapter, the compiler has included only the changes made by that chapter.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-706; changed the reference to other sections to correspond with their redesignation; and made another minor change.

Chapter 227, Laws 1967, redesignated this section as subdivision (j) of section 68-701 and changed a reference to other subdivisions to correspond with their redesignation.

68-707. Annual membership fee. In addition to the contributions hereinbefore provided to be paid by employees who are members of the retirement system created by this act, every such employee shall pay an annual membership fee of one dollar (\$1) which amount, together with other moneys appropriated for that purpose, shall be used for the support of the board of administration.

History: En. Sec. 18 (l), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (l), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; redes. 68-707, Sec. 1, Ch. 222, L. 1967; redes. 68-701 (k), Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

There is conflict between the redesignations of this section by Chapters 222 and 227, Laws 1967. Since the redesigna-

tion made by Chapter 222 is part of a comprehensive renumbering of the entire chapter, the compiler has used that redesignation.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-707.

Chapter 227, Laws 1967, redesignated this section as subdivision (k) of section 68-701.

68-708. Withdrawal of contributions by member terminating service before retirement. Should the state service of a member with less than ten (10) years of service be discontinued otherwise than by death or retirement, he shall after the date of discontinuance, be paid such part of his contributions as he demands. The board may, in its discretion, withhold for not more than one (1) year after a member last rendered state service, all or part of his contributions if after a previous discontinuance of state service he withdrew all or part of his contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in section 68-709.

Any member with ten (10) or more years of service, whose service is discontinued otherwise than by death or retirement, shall have the right to elect within ninety (90) days after such termination of service, whether to allow his accumulated contributions to remain in the retirement fund or to withdraw his accumulated contributions. Upon the qualification for retirement by reason of age or disability of a member with ten (10) or more years of service who has elected to allow his accumulated contributions to remain in the retirement fund after his service has been discontinued otherwise than by death or retirement, he shall receive a retirement allowance computed in accordance with the provisions of section 68-901.

History: En. Sec. 18 (m), Ch. 212, L. 1945; amd. Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (m), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; amd. Sec. 5, Ch. 92, L. 1955; amd. Sec. 3, Ch. 246, L. 1959; amd. & redes. 68-708, Sec. 1, Ch. 222, L. 1967; amd. & redes. 68-701 (1), Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

This section was amended twice in 1967, once by Ch. 222 and once by Ch. 227. Neither amendatory act mentioned nor incorporated the changes made by the other. The two amendments do not appear to conflict except in the numbering of the section and in form of references to other sections; in this respect, the compiler has used the amendments made by Chapter 222 since they are part of a comprehensive renumbering of the entire chapter. This section also incorporates the other amendments made by Chapter 222.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-708; changed an in-

ternal reference in accord with another redesignation made by the act; deleted "From and after July 1, 1955" at the beginning of the section; inserted "with less than ten (10) years of service" after "member" in the first sentence; added "or to withdraw his accumulated contributions" at the end of the first sentence of the second paragraph; inserted "with ten (10) or more years of service" after "disability of a member" in the second sentence of the second paragraph; inserted "after his service has been discontinued otherwise than by death or retirement" after "retirement fund" in the second sentence of the second paragraph; inserted "computed" after "retirement allowance" in the final clause of the section; and deleted "exclusive of subparagraph (g) of section 68-901" at the end of the section.

Chapter 227, Laws 1967, redesignated this section as subdivision (1) of section 68-701 and changed internal references to correspond with other redesignations made by the act.

68-709. Redeposit of withdrawn contributions—reinstatement of membership. Any member may redeposit in the retirement fund, in one (1) sum or in not to exceed twelve (12) monthly or twenty-four (24) semi-monthly payments, an amount equal to that which he withdrew therefrom at the last termination of his membership plus an amount equal to the interest which would have been credited to his account had the member not withdrawn his contributions upon termination of membership, subject to minimum monthly or semimonthly payments as fixed by the board of administration. If a member, upon re-entering the retire-

ment system after a termination of his membership, does not elect to make or, having so elected, subsequently does not make such redeposit, he shall re-enter as a new member without credit for any service except the prior service credited to him before said termination but if he does make such redeposit his membership shall be the same as if unbroken by such last termination. Regardless of whether such redeposit is made, the documents held by the retirement system as executed by said member prior to termination of membership shall be held by the system for the same purposes as prior to said termination, and beneficiaries nominated in such documents shall continue unchanged until changed as provided herein.

History: En. Sec. 18 (n), Ch. 212, L. 1945; Sec. 6, Ch. 297, L. 1947; Sec. 68-701 (n), R. C. M. 1947; Sec. 2, Ch. 176, L. 1953; Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; redes. 68-709, Sec. 1, Ch. 222, L. 1967; redes. 68-701 (m), Sec. 1, Ch. 227, L. 1967; amd. Sec. 1, Ch. 98, L. 1969.

Compiler's Notes

There is conflict between the redesignations of this section made by Chapters 222 and 227, Laws 1967. Since Chapter 222 contains a comprehensive renumbering of the entire chapter, the compiler has adopted the redesignation made by Chapter 222.

68-710. Dormant accounts transferred to pension accumulation fund. The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 68-701 (o) by Sec. 5, Ch. 92, L. 1955; Sec. 3, Ch. 246, L. 1959; redes. 68-710, Sec. 1, Ch. 222, L. 1967; redes. 68-701 (n), Sec. 1, Ch. 227, L. 1967.

Compiler's Notes

There is conflict between the redesignations of this section made by Chapters 222 and 227, Laws 1967. Since Chapter 222 contains a comprehensive renumber-

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-709.

Chapter 227, Laws 1967, redesignated this section as subdivision (m) of 68-701.

The 1969 amendment inserted "plus an amount * * * upon termination of membership" in the first sentence; and substituted "but if he does make such redeposit" for "and the rate of his contribution for future years shall be the normal rate provided for in this act at his age of re-entrance; otherwise his rate of contribution for future years shall be the same as his rate prior to the last termination of his membership, and" in the second sentence.

ing of the entire chapter, the compiler has adopted the redesignation made by that act.

Amendments

Chapter 222, Laws 1967, redesignated this section as 68-710.

Chapter 227, Laws 1967, redesignated this section as subdivision (n), section 68-701.

CHAPTER 8—RETIREMENT—COMPULSORY—VOLUNTARY

Section 68-801. Voluntary service retirement.

68-801. Voluntary service retirement. (a) Retirement of a member for service shall be made by the board of administration upon his attaining the age of fifty-five (55) years or more and upon his completion of ten (10) or more years of public service credited under this act and the filing of his written application to the board, subject to the provisions

of section 68-901; and provided, however, that the service retirement allowance shall commence on the day following the member's last day of state service or on the first day of the month in which his application is filed with the board of administration, whichever is later.

(b). * * * [Same as parent volume.]

(c) Any person so employed shall be considered as reinstated from retirement and his retirement allowance shall be canceled forthwith. Upon subsequent retirement he shall be entitled to receive a benefit, as provided in section 68-901, which shall be based upon his creditable service accumulated at the time of his previous retirement plus any creditable service accumulated subsequent to his re-employment.

History: En. Sec. 19, Ch. 212, L. 1945; amd. Sec. 7, Ch. 297, L. 1947; amd. Sec. 5, Ch. 186, L. 1951; amd. Sec. 1, Ch. 35, L. 1955; amd. Sec. 4, Ch. 246, L. 1959; amd. Sec. 2, Ch. 227, L. 1967; amd. Sec. 3, Ch. 271, L. 1969.

Amendments

The 1967 amendment substituted the second sentence in subsection (c) for "His individual account shall be credited with an amount which is the actuarial equiv-

alent of his annuity at the time of such reinstatement, and his rate of contribution for future years shall be the same as if he had continued in state service during the period of his retirement. Such person shall receive credit for prior service in the same manner as if he had never been retired."

The 1969 amendment substituted "fifty-five (55)" for "sixty (60)" after "attaining the age of" in subsection (a).

CHAPTER 9—SERVICE AND DISABILITY RETIREMENT ALLOWANCES

Section 68-901. Service retirement allowance.

68-901. Service retirement allowance. A member who has reached his sixtieth birthday upon retirement from service is entitled to receive a service retirement allowance which shall consist of either an allowance as provided in subsections (a) through (f) of this section, or an allowance as provided in subsection (g) of this section at the option of the member:

(a). * * * [Same as parent volume.]

(b) A pension, purchased by the contributions of the state, or the contracting city, equal to one (1) that portion of the annuity purchased by the accumulated normal contributions of the member, or (2) one quarter ($\frac{1}{4}$) of his average final compensation provided his total state service is at least thirty-five (35) years, otherwise, a pension which shall be one one-hundred fortieth ($\frac{1}{140}$) of his average final compensation multiplied by the number of years of state service; which ever is greater.

(c) An additional pension, purchased by the contributions of the state, for members other than persons who are employees of the university at the time of becoming members, and members employed by a contracting city. Such additional pension shall be equal to one-seventieth ($\frac{1}{70}$) of the member's final compensation, multiplied by the number of years of prior service except that if a member retires before attaining the age of sixty (60) years, the additional pension shall be reduced to

that amount which the value of the pension computed as provided in this paragraph as deferred to age sixty (60) will purchase at the actual age of retirement.

(d) If a member retires before attaining the age of sixty (60) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this section as deferred to age sixty (60) will purchase at the actual age of retirement.

(e) An additional pension, purchased by contributions of the state, for members who are also employees of the university at the time of becoming members, said additional pension to accrue from the date of retirement under the system regardless of whether said retirement was prior to the effective date hereof. Such additional pension shall be equal to one-seventieth ($1/70$) of the average annual compensation earnable by him during the three (3) years preceding retirement, multiplied by the number of years of prior service credited to him, except that if a member retires before attaining the age of sixty (60) years, the additional pension shall be reduced to that amount which the value of the pension computed as provided in this paragraph as deferred to age sixty (60), will purchase at the actual age of retirement. If, however, a member who is employed by the university at the time of becoming a member, shall not have rendered state service before January 1, 1946, his additional pension shall be based upon one-seventieth ($1/70$) of the average annual compensation earnable by him during the first year of the state service, or such portion thereof as he may have served before January 1, 1946, multiplied by the number of years of prior service credited to him.

(f). * * * [Same as parent volume.]

(g) A member who reaches his sixtieth birthday upon retirement from service is entitled to receive a service retirement allowance which shall consist of a retirement allowance which shall be equal, at age sixty (60) to one-seventieth ($1/70$) of his final compensation, multiplied by the number of years of service. A member retiring prior to the age of sixty (60) shall be entitled to a retirement allowance which shall be the actuarial equivalent of that portion of his retirement allowance based on his credited service prior to the date of actual retirement and which would have been payable to him at age sixty (60).

MINIMUM GUARANTEE

(h) When a member enters the retirement system with, or without, credit for prior service, and is otherwise eligible for retirement after attaining the age of seventy (70) years, if his final compensation was such that one-half ($1/2$) thereof is in excess of the total of his retirement allowance, an additional pension for prior service sufficient to cause his retirement allowance to amount to one-half ($1/2$) of such final compensation shall be paid him on account of prior service, but in no event shall a greater additional pension be paid than will cause the total retirement

allowance, exclusive of the annuity provided by his accumulated additional contributions, to amount to the sum of four hundred eighty dollars (\$480) per year. The provisions of this section shall not apply to the members who are employees of a contracting city unless provided for by contract between the board and the contracting city, but if a member be employed by more than one (1) of such cities, his aggregate retirement allowances shall be taken into account in applying said provisions, and said application shall be made as if the member was employed by one or more offices or departments of the state.

DISABILITY RETIREMENT

(i) Any member who has not reached seventy (70) years of age shall be retired for disability if incapacitated for the performance of duty as the result of any injury or disease arising out of and in the course of his employment. Incapacity for performance of duty shall be determined by the board of administration of the public employees' retirement system, and said board of administration shall determine whether such incapacity is the result of injury or disease arising out of and in the course of employment. In the discharge of its duty regarding such determination, the board or any member thereof or duly authorized examiner or other duly authorized representative of the board shall have power to conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a claim for disability retirement. If the board determines on the evidence that it obtains and application filed that the disability resulted from injury or disease arising out of and in the course of employment, the said member shall be retired forthwith and be paid the benefits provided under the retirement system. Any such member incapacitated for the performance of duty by reason of a cause not included in the immediately preceding sentence, and any other member so incapacitated, regardless of the cause, shall be retired forthwith regardless of age but only after ten (10) years of service to the state, or to the contracting city.

(j) Subject to the requirements as to service and cause of disability stated in subdivision (i) of this section, and upon the application of a member or upon the application of the head of the office or department in which such member is or was last employed, or any other person on behalf of such member, while such member is in state service, within four (4) months after such member's discontinuance of state service, or while such member continuously, from the date of discontinuance of state service to the time of the application or motion, is physically or mentally incapacitated to perform his duties, may apply for, or the board of administration upon its own motion may order, a medical examination to determine the existence of such incapacity. Upon the receipt of such application, the board of administration shall order such medical examination. If the medical examination and other available information show, to the satisfaction of said board, that the member is incapacitated

physically or mentally for the performance of his duties in the state service, the said board shall forthwith retire the member for disability. The said board shall secure such medical service and advice as is necessary to carry out the purposes of this section and of sections 68-1001 through 68-1004, and shall pay for such medical services and advice such compensation as the board deems reasonable.

DISABILITY RETIREMENT ALLOWANCE

(k) Upon retirement for disability a member who has attained the age of sixty (60) years shall receive a service retirement allowance as provided by subsections (a) through (g) of this section. Upon retirement of a member for disability resulting from injury or disease arising out of and in the course of employment, such member shall receive a retirement allowance of fifty per centum (50%) of his final compensation; provided, however, that for any period of time for which the industrial accident board has awarded compensation to the member, whether or not such compensation is received in weekly payments or in a lump sum, the retirement allowance shall be twenty-five per centum (25%) of his final compensation and at the end of such period of time shall revert to fifty per centum (50%) as provided above.

(l) Every other member retired for disability shall receive a retirement allowance which shall consist of:

(i) An annuity which shall be equal to one one-hundred fortieth (1/140) of his final compensation multiplied by the number of years of state service; and

(ii) If, in the opinion of the board of administration, such disability is not due to intemperance, willful misconduct or violation of law on the part of the member, a pension paid from the contributions of the state, or of the contracting city which, together with his annuity provided by his accumulated normal contributions, shall make the retirement allowance, exclusive of the annuity provided by his accumulated additional contributions, equal to ninety per cent (90%) of one-seventieth (1/70) of his final compensation multiplied by the number of years of service credited to him. In no event, however, shall this pension exceed twenty-five per cent (25%) of his final compensation.

(iii) If, in the opinion of the board, the disability is due to intemperance, willful misconduct or violation of law, on the part of the member, and the annuity to which said member is entitled under subdivisions (k) and (l) of this section, is less than two hundred forty dollars (\$240) per year, the board of administration in its discretion, may pay to said member, in one lump sum and in lieu of said annuity, his accumulated contributions.

(m) For purposes of calculating final compensation a member of the legislative assembly and a lieutenant governor of the state of Montana may include as annual compensation all or any portion of the product of his compensation per day as a member, speaker of the house of representatives and president of the senate, including compensation earned prior to July 1, 1969, multiplied by three hundred sixty (360), if he pays there-

on the normal contribution provided by this act. For purposes of calculating benefits under this subsection he may include all or any portion of his service as a member of the legislature and a lieutenant governor of the state of Montana using the product of his compensation per day multiplied by three hundred sixty (360) if he pays thereon the normal contribution provided by this act. He may also include his prior service.

History: En. Sec. 20, Ch. 212, L. 1945; amd. Sec. 6, Ch. 186, L. 1951; amd. Sec. 5, Ch. 246, L. 1959; amd. Sec. 1, Ch. 207, L. 1963; amd. Sec. 3, Ch. 227, L. 1967; amd. Sec. 4, Ch. 271, L. 1969.

Amendments

The 1963 amendment inserted the designation for clause (1) of subsection (b); added clause (2) and the words "whichever is greater" to subsection (b); deleted second and third paragraphs of former subsection (h), for text of which see parent volume; and added the proviso to the second sentence of former subsection (j).

The 1967 amendment inserted "who has reached his sixty-fifth birthday prior to July 1, 1967" after "A member," at the beginning of the section and added "either an allowance as provided in subsections (a) through (f) of this section, or an allowance as provided in subsection (g) of this section at the option of the member" after "consist of" at the end of the first paragraph; added a new subsection (g); redesignated old subsections (g) through (j) as new subsections (h) through (k); in new subsection (h), substituted "retirement allowance, an" for "pension annuity, and" after "the total of his"; deleted "a second additional pension for prior service" after "for prior service"; deleted "second" before "additional pension"; in new subdivision (j), substituted "subdivision (i)" for "subdivision (h)" after "disability stated in," and deleted "or upon application of the university, if such member is an employee of the university" after "last employed"; deleted old subdivision (k), which read, "Upon retirement for disability a member who is an employee of the university and who has attained the age of sixty (60) years, shall receive a service retirement allowance as provided in subdivisions (a), (b), and (c) of this section"; in new subdivision (k), substituted "through (g)" for "(b), (c) of this section" before "as provided by subsections (a)"; and, in subsection (1)(i), substituted "equal to one one-hundred fortieth (1/140) of his final compensation multiplied by the number of years of state service; and" for "the actuarial equivalent of his accumulated contributions at the time of his retirement; and" after "which shall be"; in subsection (1)(ii), substituted "paid from" for "purchased by" after "a pension"; deleted after "credited to him" a passage which read, "if such disability retirement allowance

exceed one-fourth (1/4) of his final compensation; otherwise, (b) ninety per cent (90%) of one-seventieth (1/70) of his final compensation multiplied by the number of years of service which would be creditable to him were his service to continue until attainment by him of age sixty-five (65), but in such case the retirement allowance shall not exceed one-fourth (1/4) of such final compensation"; substituted "this pension exceed twenty-five per cent (25%) of his final compensation" for "the pension purchased by the contributions of the state or of the contracting city be more than sufficient to make the disability retirement allowance, exclusive of the annuity provided by accumulated additional contributions, exceed the service retirement allowance, exclusive of any annuity purchased by accumulated additional contributions, receivable by the member should he retire at the lowest age at which he would be eligible for service retirement" after "In no event, however, shall"; in subsection (1)(iii), deleted "(j)" after "subdivisions"; and made minor changes in punctuation.

The 1969 amendment, in the introductory paragraph, substituted "sixtieth" for "sixty-fifth" before "birthday" and deleted "prior to July 1, 1967" before "upon retirement"; in subdivisions (c), (d), (e), and (g), substituted "sixty (60)" for "sixty-five (65)" where the references appear; also in subdivision (g), deleted "on or after July 1, 1967" after "birthday" and deleted the item designations "(i)" and "(ii)," incorporating the text of the items into the subdivision; and added subdivision (m).

Incapacity Not Result of Employment

Where relator suffered from diabetes mellitus, smoker's throat, and arteriosclerosis, it was not an abuse of discretion for the board of administration to find that resulting incapacity was not the result of injury or disease arising out of and in the course of his employment as a construction engineer. *State ex rel. Sanders v. Hill*, 141 M 558, 381 P 2d 475.

Mandamus

While mandamus may compel the board of administration to act, it may not be used to control its discretion and substitute the judgment of the court for that of the board, and refusal of the board to alter its ruling to fit the holding of the

district court was not arbitrary or capricious and would not support the writ. State ex rel. Sanders v. Hill, 141 M 558, 381 P 2d 475.

CHAPTER 10—REINSTATEMENT—REDUCTION OF ALLOWANCE—
OPTIONAL MODIFICATION OF ALLOWANCES

Section 68-1001. Reinstatement from disability retirement.

68-1004. Payment in case of cancellation of disability allowance.

68-1001. Reinstatement from disability retirement. (a). * * *
[Same as parent volume.]

(b) In the case of such a member who is an employee of a contracting city, and who for any reason is not so reinstated or is not re-employed by said city in a position subject to the retirement system, he shall be paid the amount of his accumulated contributions at the time of his retirement for disability, with interest, less the total retirement allowance received.

(c) Should a disability beneficiary re-enter the state service and be eligible for membership in the retirement system in accordance with section 68-202, his retirement allowance shall be canceled and he shall immediately become a member of the retirement system. Upon subsequent retirement he shall be entitled to receive a benefit, as provided in section 68-901, which shall be based upon his creditable service accumulated at the time of his previous retirement plus any creditable service accumulated subsequent to his re-employment.

History: En. Sec. 21, Ch. 212, L. 1945; amd. Sec. 6, Ch. 92, L. 1955; amd. Sec. 4, Ch. 227, L. 1967.

Amendments

The 1967 amendment, in subsection (b), substituted the passage beginning, "the amount of his accumulated contributions," for "an amount which is the actuarial equivalent of his annuity at that time, as based on a disabled life, but said amount shall not exceed the amount of his accumulated contributions as such amount stood at the time of his retirement for disability"; in subsection (c), deleted, after "retirement system," a passage,

which read, "his rate of contribution for future years being that established for his age at the time of such re-entry. His individual account shall be credited with an amount which is the actuarial equivalent of his annuity at that time, as based on a disabled life, but such amount shall not exceed the amount of his accumulated contributions as such amount stood at the time of his retirement for disability. Such member shall receive credit for prior service in the same manner as though he had never been retired for disability"; and added the last sentence of that subsection.

68-1004. Payment in case of cancellation of disability allowance. Should the retirement allowance of any disability beneficiary be canceled for any cause other than re-entrance into the state service, he shall be paid the amount of his accumulated contributions at the time of his retirement for disability, with interest, less the total retirement allowance received.

History: En. Sec. 24, Ch. 212, L. 1945; amd. Sec. 5, Ch. 227, L. 1967.

Amendments

The 1967 amendment substituted the passage beginning, "the amount of his accumulated contributions," to the end of

the section, for "an amount which is the actuarial equivalent of his annuity at that time, based on a disabled life, but said amount shall not exceed the amount of his accumulated contributions as such amount stood at the time of his retirement for disability."

CHAPTER 11—DEATH BENEFITS

Section 68-1101. Death benefit.

68-1101. Death benefit. Upon the death before retirement of a member while in the state service, or within four (4) months after the discontinuance of state service, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from the discontinuance of state service, the retirement system shall be liable for a death benefit, which death benefit shall be paid to such person or other legal entity as he has nominated by written designation duly executed and filed with the retirement board or, if no beneficiary shall be nominated, then pursuant to the provisions of section 68-1201; provided, however, that death benefits shall not be payable to the beneficiary of a member who (a) has elected a joint life annuity option as provided in section 68-1005, or (b) who has received a disability retirement allowance as provided for in paragraphs (j) through (l) of section 68-901, for a period of four (4) months immediately preceding death. Such death benefit shall consist of:

(a). * * * [Same as parent volume.]

(b) An amount, provided from contributions by the state, or by a contracting city, which shall be equal to one-twelfth (1/12th) of the annual compensation earnable by the deceased during the twelve (12) months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed fifty per centum (50%) of such compensation.

(c) and (d). * * * [Same as parent volume.]

(e) Survivorship provision. In lieu of the benefits provided in (a) and (b) above, if the deceased member is qualified by reason of service for a retirement benefit, the beneficiary; if a natural person of legal age, may elect to receive a monthly life annuity. Said monthly life annuity is to be based on the beneficiary's attained age at the time of the deceased member's death and to be calculated from an amount equal to the required reserve for the retirement allowance earned by the deceased member to the date of his death; and provided that this provision be retroactive for all members who had an option for a lesser retirement allowance filed in the retirement system office at the time of their death.

(f) The beneficiary shall have ninety (90) days after receipt of notice from the board of administration that he is entitled to a death benefit, to make the elections provided for in paragraphs (c) and (e) above.

History: En. Sec. 26, Ch. 212, L. 1945; amd. Sec. 7, Ch. 186, L. 1951; amd. Sec. 2, Ch. 225, L. 1953; amd. Sec. 9, Ch. 92, L. 1955; amd. Sec. 2, Ch. 207, L. 1963; amd. Sec. 1, Ch. 110, L. 1965; amd. Sec. 6, Ch. 227, L. 1967.

Amendments

The 1963 amendment substituted "which death benefit shall be paid" before "such person having an insurable interest" in the first paragraph for "which if there is a surviving wife or surviving children under eighteen (18) years of age, shall be

paid in monthly installments and to the surviving wife and children as presented therein; otherwise such death benefit shall be paid to his estate, or"; and inserted in the first paragraph the words "or, if no beneficiary shall be nominated, then pursuant to the provisions of section 68-1201."

The 1965 amendment substituted "or other legal entity" for "having an insurable interest in his life" following "such person" in the first paragraph; substituted "if a natural person of legal age" for "nominated by the deceased member" following "beneficiary" in the first sentence

of paragraph (e); deleted "named in (e) above" following "beneficiary" at the beginning of paragraph (f); deleted "the right within" following "shall have" and substituted the clause beginning with "after receipt of" and ending with paragraphs (c) and (e) above" for a clause which read "of the member's death to elect to receive a death benefit instead of the benefit designated in (e) above" at the end of paragraph (f).

The 1967 amendment, in the first paragraph, substituted "(j)" for "(i)" before "through (l) of section 68-901"; in subparagraph (e), substituted "retirement allowance earned by the deceased member to the date of his death" for "deceased member's creditable service, together with the deceased member's accumulated contributions" after "reserve for the"; and made minor changes in punctuation.

Saving Clause

Section 7 of Ch. 227, Laws 1967 read "This act is intended to be supplementary, and is not intended to repeal sections 68-701 through 68-1101, R. C. M. 1947, or any other law relating to the Public Employees' Retirement Act."

Separability Clauses

Section 3 of Ch. 207, Laws 1963 read "It is the intent of the legislative assembly

bly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Section 2 of Ch. 110, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clauses

Section 4 of Ch. 207, Laws 1963 and Sec. 3 of Ch. 110, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 5 of Ch. 207, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 7, 1963.

Section 4 of Ch. 110, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 1, 1965.

CHAPTER 13—MISCELLANEOUS PROVISIONS

Section 68-1307. Allocation of money to public employees' retirement fund—disbursement procedure—contributions under this section, how applied.

68-1307. Allocation of money to public employees' retirement fund—disbursement procedure—contributions under this section, how applied. (a) During the biennium for which appropriations of money are made by this legislative assembly, there shall be paid monthly by each department, board, commission, bureau, or other agency of the state into the public employees' retirement fund out of moneys appropriated from the state general fund, a sum equal to four per cent (4%) of the total compensation paid members of the retirement system. In computing the amount of compensation upon which said four per cent (4%) shall be reckoned, there shall be included a sum equal to the amount of compensation which would have been paid to members of the system who elect to continue and do continue their contributions to the system and who are absent with the armed forces of the United States, so long as such absence shall be continued.

(b) Each department, board, commission, bureau or other agency of the state shall certify to the state auditor at the end of each month the total amount of compensation paid members of the retirement system, including that which would have been paid to members who are absent in the armed forces of the United States. The state auditor shall thereupon

draw a warrant upon the state treasurer for said four per cent (4%) of compensation contributed by the state. Said warrant shall be drawn on funds appropriated to each department, board, commission, bureau or other agency of the state to the credit of the public employees' retirement fund and the state treasurer shall deposit the amount thereof in said retirement fund.

(c). * * * [Same as parent volume.]

(d) Each department, board, commission, bureau or other agency of the state under whose supervision there are state employees who are paid either fully or in part from federal funds, but who are not subject to the federal retirement system, shall certify to the state auditor at the end of each month the total amount of compensation paid such employees who are members of the retirement system; and the state auditor shall thereupon draw a warrant upon the state treasurer in the amount of four per cent (4%) of the compensation of such employees, regardless of whether such compensation is partly or entirely derived from federal funds. Such warrant shall be drawn on funds appropriated to such department, board, commission, bureau or other agency of the state to the credit of the public employees' retirement fund and the treasurer shall deposit the amount thereof in said retirement fund.

History: En. Sec. 35, Ch. 212, L. 1945; amd. Sec. 8, Ch. 297, L. 1947; amd. Sec. 1, Ch. 214, L. 1967; amd. Sec. 5, Ch. 271, L. 1969.

per cent (3%)” wherever found in subsections (a), (b) and (d).

The 1969 amendment substituted “four per cent (4%)” for “three and five tenths per cent (3.5%)” where the references appear in subsections (a), (b), and (d).

Amendments

The 1967 amendment deleted “From and after July 1, 1947, and” before “during the biennium” at the beginning of subsection (a); and substituted “three and five tenths per cent (3.5%)” for “three

Repealing Clause

Section 2 of Ch. 214, Law's 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 14—GAME WARDENS' RETIREMENT SYSTEM

- Section 68-1401. Definition of terms.
 68-1402. State game warden defined.
 68-1403. Establishment of Montana state game wardens' retirement system.
 68-1404. Montana state game wardens' retirement board.
 68-1405. Payments into the Montana game wardens' retirement system.
 68-1406. Rules and regulations—actuarial data.
 68-1407. Membership.
 68-1408. State game wardens' retirement account.
 68-1409. Payments by contributors.
 68-1410. Contributions by the state of Montana.
 68-1411. Retirement.
 68-1412. Voluntary retirement.
 68-1413. Retirement allowance.
 68-1414. Disability retirement allowance.
 68-1415. Involuntary retirement allowance.
 68-1416. Refunds in case of resignation or discharge.
 68-1417. Payments upon death attributable to employment.
 68-1418. Payments in case of death from natural causes.
 68-1419. Monthly payments of retirement allowances.
 68-1420. Exemption from taxes and execution.
 68-1421. Nomination of beneficiary.

- 68-1422. Service in the armed forces of the United States.
- 68-1423. Fraud—correction of errors.
- 68-1424. Restrictions on payments.
- 68-1425. Subrogation.
- 68-1426. Payments under other laws.
- 68-1427. Optional retirement allowance.
- 68-1428. Transfer of dormant accounts.
- 68-1429. State public employees' retirement system, ineligibility of member.

68-1401. Definition of terms. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions," the total of the amount deducted from the salary of a contributor and paid into the account, and standing to his credit in the account together with the regular interest thereon.

"Beneficiary," shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired state game warden," any person in receipt of a retirement allowance under this act.

"Board," the Montana state game wardens' retirement board.

"Contributor," any person who has accumulated deductions in the account, standing to his credit.

"Final salary," the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances and expenses, for any three (3) years of continuous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

"Actuarial equivalent," the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Account," the Montana state game wardens' retirement account in the agency fund.

"Involuntary retirement," a retirement not for cause and before retirement age.

"Member's annuity," payments for life derived from contributions made by the contributor.

"Optional retirement age," the age at which a contributor may retire after twenty (20) years service or more; provided that such contributor has reached the age of fifty-five (55) years.

"Retirement age," the age at which a member retires after twenty-five (25) years of creditable service as a state game warden of the Montana fish and game department; provided that all members must retire at age sixty (60).

"Retirement allowance," the state annuity plus the member's annuity.

"State annuity," payments for life derived from contributions made by the state of Montana fish and game moneys in the earmarked revenue fund.

History: En. Sec. 1, Ch. 130, L. 1963.

Title of Act

An act creating and establishing a Montana state game wardens' retirement system; defining the terms "accumulated deductions," "beneficiary," "retired state game warden," "board," "contributor," "final salary," "actuarial equivalent," "account," "involuntary retirement," "member's annuity," "optional retirement age," "retirement age," "retirement allowance," "state annuity," "state game warden"; creating a Montana state game wardens' retirement board; providing for payments into the Montana game wardens' retirement account; providing the board may establish rules and regulations for proper administration, operation and enforcement of this act; defining who shall be members of said retirement system; creating a state game wardens' retirement account; providing for contributions by members of the Montana state game wardens; providing for contributions by the state of Montana; providing for retirement, voluntary retirement, retirement allowance, disability retirement allowance, involuntary

retirement allowance, refunds in case of resignation or discharge, payments upon death, payments in case of death from natural causes; providing for monthly payments of retirement allowances; providing for the exemption from taxes and execution of member's annuity; providing for the manner of designating beneficiaries; providing for service in the armed forces of the United States; prohibiting fraud and providing for the manner of correcting errors; providing for restrictions on payments to beneficiaries; providing for the subrogation of the state of Montana to the rights of the members or dependents against certain third parties; providing for payments under other laws; providing for optional retirement allowances; providing that each game warden shall be ineligible to membership in state public employees' retirement system; providing that as to constitutionality the provisions of this act are severable; providing this act shall be in full force and effect from and after its passage and approval; and repealing all acts and parts of acts in conflict herewith.

68-1402. State game warden defined. Whenever used in this act, state game warden means all state fish and game wardens hired by the state fish and game commission and shall include all warden supervisory personnel whose salaries or compensation is paid out of the Montana fish and game moneys in the earmarked revenue fund.

History: En. Sec. 2, Ch. 130, L. 1963.

68-1403. Establishment of Montana state game wardens' retirement system. A retirement system is hereby established for Montana state game wardens.

History: En. Sec. 3, Ch. 130, L. 1963.

68-1404. Montana state game wardens' retirement board. There is hereby created a Montana state game wardens' retirement board, hereinafter referred to as the "board." The board shall consist of five (5) members who shall be the same persons as those who compose the board of administration of the public employees' retirement system.

History: En. Sec. 4, Ch. 130, L. 1963.

68-1405. Payments into the Montana game wardens' retirement system. All contributions by the state fish and game moneys in the earmarked revenue fund and all contributions by the state game wardens as designated by section 1 [68-1401] above, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the board, who shall credit such payments to the Montana state game wardens' retirement account in the agency fund. Such board shall have exclusive control of the administration of such account. The state treasurer shall be custodian of the account, subject to the exclusive control of the board as to the administra-

tion thereof and the state board of land commissioners as to the investment thereof. Whenever there is on deposit in the Montana state game wardens' retirement account a sum in excess of twenty-five thousand dollars (\$25,000), such excess will be invested by the state board of land commissioners as part of the long-term investment fund and any of the account less than twenty-five thousand dollars (\$25,000) in amount shall be invested by the state board of land commissioners as part of the short-term investment fund when so directed by the Montana game wardens' retirement board.

History: En. Sec. 5, Ch. 130, L. 1963.

68-1406. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary and is charged within the limitations of this act for its proper administration, operation and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors and to the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 130, L. 1963.

68-1407. Membership. Every state game warden, including all warden supervisory personnel, whose salary or compensation for services is paid wholly out of the Montana fish and game moneys in the earmarked revenue fund and who is assigned to law enforcement in the Montana fish and game department, shall be required to become a member of the retirement system established by this act, on July 1, 1963, and thereafter when first becoming a state game warden. Contributions by members under this act shall commence with the first payroll after July 1, 1963. If any person becomes a state game warden subsequent to July 1, 1963, or shall have been at any time heretofore a state game warden, he shall receive credit for any such service prior to July 1, 1963, upon complying with the provisions of this act. All state game wardens shall be members of the retirement system so long as actively employed in such capacity.

History: En. Sec. 7, Ch. 130, L. 1963.

68-1408. State game wardens' retirement account. There is hereby created state game wardens' retirement account in the agency fund and all moneys received under the provisions of this act shall be credited to said account. In addition thereto, all moneys any state game warden, employed as such on July 1, 1963, has heretofore paid into the public employees' retirement system, whether as a state game warden or otherwise, is hereby appropriated therefrom and credited to the account hereby created and any such state game warden shall be allowed service credit hereunder for any such previous service, including other Montana state, county or city service. The state treasurer shall, upon the passage of this act, ascertain the amount heretofore paid by state game wardens or as deputy game

wardens as aforesaid and transfer the amount so paid to the account hereby created. The state examiner shall audit this transfer of funds.

History: En. Sec. 8, Ch. 130, L. 1963.

68-1409. Payments by contributors. Every member shall be required to contribute into the account a sum equal to seven per cent (7%) of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account; provided that [for] any member who contributes after twenty-five (25) years of service, the contributor's retirement allowance shall be increased in an amount as calculated on an actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his retirement.

History: En. Sec. 9, Ch. 130, L. 1963.

Compiler's Note

The compiler has inserted the bracketed word "for" in the proviso.

68-1410. Contributions by the state of Montana. (a) There shall be paid out of the Montana fish and game moneys in the earmarked revenue fund, monthly, by the state treasurer, a sum equal to seven per cent (7%) of the total amount of each Montana game wardens' retirement system member's salary, the same to be credited to the retirement account created by this act. (b) The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits shall be paid by the state of Montana out of the fish and game moneys in the earmarked revenue fund, made on the basis of budgets submitted by the board.

History: En. Sec. 10, Ch. 130, L. 1963.

68-1411. Retirement. Any member in service who has completed at least twenty-five (25) years of creditable service, and who has reached the age of fifty-five (55) years, may retire on service retirement allowance upon written application to the board, setting forth at what time, not less than thirty (30) days nor more than ninety (90) days subsequent to the filing thereof, he desires to be retired; provided that retirement shall be compulsory at age sixty (60).

History: En. Sec. 11, Ch. 130, L. 1963.

68-1412. Voluntary retirement. If a contributor has served twenty (20) years of creditable service as a state game warden, and has reached the age of fifty-five (55) years, he is hereby granted the option and privilege of retiring and, in such case, his retirement allowance shall be proportionately reduced.

History: En. Sec. 12, Ch. 130, L. 1963.

68-1413. Retirement allowance. Upon retirement from service a service retirement allowance shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of his retirement and the state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of one-half ($\frac{1}{2}$) of his average final salary with twenty-five (25) years' service.

History: En. Sec. 13, Ch. 130, L. 1963;
amd. Sec. 1, Ch. 111, L. 1967.

Amendments

The 1967 amendment deleted "which" before "shall consist" in the first sentence, and added "with twenty-five (25) years' service" at the end of this section.

68-1414. Disability retirement allowance. In case of the total disability of a contributor, permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement; provided that if such total disability is a direct result of any service to the Montana fish and game department in line of duty, and the contributor has had over ten (10) years of service, then such state game warden who is totally and permanently disabled shall be retired on total retirement allowance of one-half ($\frac{1}{2}$) of his average final salary.

History: En. Sec. 14, Ch. 130, L. 1963.

68-1415. Involuntary retirement allowance. Should a contributor be discontinued from service, not voluntarily, after having completed ten (10) years of total service, but before reaching retirement age, he shall, upon filing of an application in the manner herein provided for retirement, be paid as he may elect as follows: (a) the full amount of accumulated deductions standing to his credit; or (b) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit.

History: En. Sec. 15, Ch. 130, L. 1963.

68-1416. Refunds in case of resignation or discharge. When a contributor resigns of his own volition or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 16, Ch. 130, L. 1963.

68-1417. Payments upon death attributable to employment. If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary. Such retirement allowance shall consist of: (a) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and (b) the actuarial equivalent of a state annuity which when added to the member's annuity will provide a total annuity equal to fifty per cent (50%) of the final salary of the contributor, less the amount which is paid to any such beneficiary under the Workmen's Compensation Act of the state of Montana, during the period such compensation is paid or payable; provided that in no event shall a beneficiary be paid for more than fifteen (15) years or past the age of sixty-five (65) years, whichever is the greater.

History: En. Sec. 17, Ch. 130, L. 1963.

68-1418. Payments in case of death from natural causes. (a) If a retired state game warden dies before receiving in payments the present

value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(b) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in section 15 [68-1415] above.

History: En. Sec. 18, Ch. 130, L. 1963.

68-1419. Monthly payments of retirement allowances. The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and shall not be increased, decreased, revoked or repealed unless by act of the legislative assembly of the state of Montana.

History: En. Sec. 19, Ch. 130, L. 1963.

68-1420. Exemption from taxes and execution. Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these, shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment or any other process whatsoever and shall be unassignable.

History: En. Sec. 20, Ch. 130, L. 1963.

68-1421. Nomination of beneficiary. Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board, and to change the beneficiary in like manner. Such designation and all changes must be filed with the board up until, but not after, the time of retirement.

History: En. Sec. 21, Ch. 130, L. 1963.

68-1422. Service in the armed forces of the United States. Any state game warden now in or hereafter inducted into the armed forces of the United States, shall have the option: (a) to continue his payments into the account; or (b) allow the board to make his payments for him during such military service, in which event he shall repay the account the full amount of such payments upon his return to state game warden status, and such repayments must be made within two (2) years after his return to active state game warden status; provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

History: En. Sec. 22, Ch. 130, L. 1963.

68-1423. Fraud—correction of errors. (a) No person shall knowingly make any false statement or falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system; (b) should any such change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

Any person violating any of the provisions of subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars (\$1,000) or suffer imprisonment not exceeding one year, or both, in the discretion of the court.

History: En. Sec. 23, Ch. 130, L. 1963.

68-1424. Restrictions on payments. If any beneficiary is convicted of a felony, the board shall have the authority to revoke or suspend, for as long a time as it sees fit, disbursement of the state annuity. Where the illness or injuries causing a contributor to be retired, or where the death of the contributor is directly and proximately caused by such contributor's immoral or intemperate conduct or gross negligence, the board shall have the authority to refuse, revoke or suspend for as long a time as it sees fit, disbursement of the state annuity.

History: En. Sec. 24, Ch. 130, L. 1963.

68-1425. Subrogation. Where a third person is liable to the member or [any] of his dependents for injury or death, the state shall be subrogated to the right of the dependents against such third person; but only to the extent of the state annuity payable under this act by the state. Any recovery against such third person, in excess of the state annuity theretofore paid or thereafter to be paid by the state shall be paid forthwith to the contributor or the person designated by such contributor.

History: En. Sec. 25, Ch. 130, L. 1963.

Compiler's Note

The compiler inserted the bracketed word "any" in the first sentence.

68-1426. Payments under other laws. All payments provided for in this act are in addition to any other benefits now or hereafter provided for under the Workmen's Compensation Act of the state of Montana.

History: En. Sec. 26, Ch. 130, L. 1963.

68-1427. Optional retirement allowance. Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options:

Option No. 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option No. 2. Upon his death, one-half ($\frac{1}{2}$) of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written

designation duly executed and filed with the board at the time of his retirement.

Option No. 3. Such other benefit or benefits shall be paid either to the beneficiary or to such other person or persons as he nominates, as, together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board.

History: En. Sec. 27, Ch. 130, L. 1963.

68-1428. **Transfer of dormant accounts.** The board may in its discretion transfer the accumulated deductions of a member to the employer's account in the Montana state game wardens' retirement account in the agency fund if the member's account has been dormant for a period of ten (10) years provided that no right of the member shall be jeopardized by such transfer and the accumulated deductions shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 28, Ch. 130, L. 1963.

68-1429. **State public employees' retirement system, ineligibility of member.** Each state game warden shall, after July 1, 1963, become a member of this retirement system and thereafter no state game warden shall be eligible to membership to the state public employees' retirement system and the provisions of said law shall not apply to Montana state game wardens.

History: En. Sec. 29, Ch. 130, L. 1963.

Separability Clause

Section 30 of Ch. 130, Laws 1963 read "The provisions of this act are severable, and, if any section, subdivision, sentence, or word of this act shall be determined by a court of competent jurisdiction to be unconstitutional or inoperative, it shall not affect the remaining portions of this act."

Repealing Clause

Section 31 of Ch. 130, Laws 1963 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 32 of Ch. 130, Laws, 1963 provided the act should be in effect from and after its passage and approval. Approved March 2, 1963.

TITLE 69—PUBLIC HEALTH AND SAFETY

- Chapter 1. State board of health—creation—powers and duties, Repealed—Section 223, Chapter 197, Laws of 1967.
2. Industrial hygiene, Repealed—Section 223, Chapter 197, Laws of 1967.
3. Tuberculosis control, Repealed—Section 223, Chapter 197, Laws of 1967.
4. Dental health, Repealed—Section 223, Chapter 197, Laws of 1967.
5. Vital statistics, Repealed—Section 223, Chapter 197, Laws of 1967.
6. Local boards of health in cities and towns—creation—powers and duties, Repealed—Section 223, Chapter 197, Laws of 1967.
7. County boards of health and county health officers—duties, Repealed—Section 223, Chapter 197, Laws of 1967.
8. Establishment of full-time county and district health departments and boards of health authorized, Repealed—Section 223, Chapter 197, Laws of 1967.
9. State epidemiologist—employment and powers, Repealed—Section 223, Chapter 197, Laws of 1967.
10. State board of entomology—duties—infantile paralysis—Rocky Mountain spotted fever control, Repealed—Section 223, Chapter 197, Laws of 1967.
11. Venereal disease control, Repealed—Section 223, Chapter 197, Laws of 1967.
12. Shoddy—control, manufacture and sale, Repealed—Section 223, Chapter 197, Laws of 1967.
13. Public and other water supplies—control by state board of health, Repealed—Section 223, Chapter 197, Laws of 1967.
15. Boiler inspection—engineers license, 69-1501, 69-1503, 69-1512, 69-1515, 69-1516.
18. Public safety in case of fire—fire escapes and apparatus—inspections, 69-1801, 69-1802, 69-1808.
19. Explosives—regulation of manufacture, storage and sale, 69-1910.
20. Maternity hospitals—license by state board of health, Repealed—Section 223, Chapter 197, Laws of 1967.
21. State-wide building construction standards, 69-2104 to 69-2120.
22. Blood plasma—procuring and processing, Repealed—Section 223, Chapter 197, Laws of 1967.
23. Anatomical Gift Act, 69-2315 to 69-2323.
24. Long-term care facilities, Repealed—Section 223, Chapter 197, Laws of 1967.
25. Retiring room for employees serving food to the public required, Repealed—Section 223, Chapter 197, Laws of 1967.
26. Mats or other floor coverings required in certain establishments where food is served, Repealed—Section 223, Chapter 197, Laws of 1967.
28. Refrigerated lockers—regulation of, Repealed—Section 16, Chapter 17, Laws of 1967.
29. Licensing and supervision of hospitals and related facilities, Repealed—Section 223, Chapter 197, Laws of 1967.
30. Montana Hospital, Medical and Related Facility Survey and Construction Act, Repealed—Section 223, Chapter 197, Laws of 1967.
31. Cesspools, septic tanks, privies and sewage lagoons, Repealed—Section 223, Chapter 197, Laws of 1967.
32. State board of health—maternal and child health services—educative program—school nurses—supervision by board—authority of counties and school boards—services for crippled children—education for children and adults in use and abuse of narcotics, Repealed—Section 223, Chapter 197, Laws of 1967.
34. Sanitarians, 69-3404.
35. Motorboat and vessel regulation, 69-3502 to 69-3504.1, 69-3505, 69-3508.1, 69-3508.2, 69-3517.
36. County and municipal ambulance service, 69-3601.
37. Accommodation of handicapped persons in public buildings, Repealed—Section 27, Chapter 366, Laws of 1969.
38. Public swimming pools and bathing places, Repealed—Section 223, Chapter 197, Laws of 1967.

39. Air pollution, 69-3904 to 69-3923.
40. Refuse disposal areas, 69-4001 to 69-4010.
41. State board of health, 69-4101 to 69-4110.1, 69-4111 to 69-4118.
42. Industrial hygiene, 69-4201 to 69-4205.
43. Tuberculosis control, 69-4301 to 69-4317.
44. Vital statistics, 69-4401 to 69-4437.
45. Local boards of health, 69-4501 to 69-4519.
46. Venereal disease, 69-4601 to 69-4617.
47. Shoddy control, 69-4701 to 69-4707.
48. Water pollution, 69-4801 to 69-4808.1, 69-4809, to 69-4819.
49. Public water supply, 69-4901 to 69-4908.
50. Subdivisions, 69-5001 to 69-5005.
51. Cadavers, 69-5101 to 69-5106.
52. Hospitals, hospital related facilities, and long-term care facilities, 69-5201 to 69-5219.1, 69-5220, 69-5221.
53. Hospitals, medical and related facility survey and construction, 69-5301 to 69-5313.
54. Cesspools, septic tanks, and privies, 69-5401 to 69-5408.
55. Public swimming pools and bathing places, 69-5501 to 69-5511.
56. Tourist campgrounds, 69-5601 to 69-5607.
57. General penalty, 69-5701.
58. Control of ionizing radiation, 69-5801 to 69-5816.
59. Water treatment plants and distribution systems, 69-5901 to 69-5912.
60. Refuse disposal districts, 69-6001 to 69-6012.
61. Consent by minors to medical or surgical care, 69-6101 to 69-6105.
62. Alcohol and drug dependence, 69-6201 to 69-6207.
63. Information available to in-hospital medical staff committees, 69-6301 to 69-6304.
64. Voluntary sterilization—state board of eugenics, 69-6401 to 69-6406.

CHAPTER 1—STATE BOARD OF HEALTH—CREATION— POWERS AND DUTIES

(Repealed—Section 7, Chapter 57, Laws of 1949; Section 28, Chapter 264, Laws of 1955; Section 223, Chapter 197, Laws of 1967)

69-101 to 69-103. (2444 to 2446) Repealed.

Repeal

These sections (Sec. 1, Ch. 110, L. 1907; Secs. 1 to 3, Ch. 225, L. 1919; Secs. 1, 2, Ch. 225, L. 1943; Secs. 1 to 3, Ch. 57, L. 1949; Sec. 1, Ch. 181, L. 1953; Sec. 1, Ch.

212, L. 1961), relating to the creation and composition of the state board of health, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-105. (2448) Repealed.

Repeal

This section (Sec. 2, p. 81, L. 1901; Sec. 2, Ch. 110, L. 1907; Sec. 1, Ch. 264, L. 1955), relating to the functions, powers

and duties of the state board of health, was repealed by Sec. 223, Ch. 197, Laws 1967.

69-105.1 to 69-105.4. Repealed.

Repeal

These sections (Secs. 4 to 6, Ch. 57, L. 1949; Sec. 2, Ch. 264, L. 1955), relating to additional powers, legal advisor and lab-

oratory services of the state board of health, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-107. (2450) Repealed.

Repeal

This section (Sec. 4, Ch. 110, L. 1907), relating to the rule-making power of the

state board of health, was repealed by Sec. 223, Ch. 197, Laws 1967.

69-109 to 69-127. (2452 to 2463) Repealed.**Repeal**

These sections (Secs. 8 to 10, 25 to 27, 32, 36 to 38, Ch. 110, L. 1907; Sec. 1, Ch. 66, L. 1911; Sec. 1, Ch. 15, L. 1913; Sec. 1, Ch. 103, L. 1917; Sec. 1, Ch. 124, L. 1921; Secs. 1 to 6, Ch. 80, L. 1929; Sec. 1,

Ch. 191, L. 1947; Sec. 1, Ch. 59, L. 1955; Sec. 18, Ch. 41, L. 1963), relating to tourist camp grounds and communicable diseases, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 2—INDUSTRIAL HYGIENE

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-201 to 69-208. Repealed.**Repeal**

These sections (Secs. 1 to 8, Ch. 127, L. 1939; Sec. 3, Ch. 264, L. 1955), relating to

industrial hygiene, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 3—TUBERCULOSIS CONTROL

(Repealed—Section 28, Chapter 264, Laws of 1955; Section 223, Chapter 197, Laws of 1967)

69-301. Repealed.**Repeal**

This section (Sec. 1, Ch. 170, L. 1945; Sec. 4, Ch. 264, L. 1955), relating to tuber-

culosis control, was repealed by Sec. 223, Ch. 197, Laws 1967.

69-303 to 69-319. Repealed.**Repeal**

These sections (Sec. 3, Ch. 170, L. 1945; Secs. 1 to 16, Ch. 259, L. 1959; Secs. 75,

76, Ch. 199, L. 1965), relating to tuberculosis control, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 4—DENTAL HEALTH

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-401 to 69-404. Repealed.**Repeal**

These sections (Secs. 1 to 4, Ch. 125, L. 1943; Sec. 1, Ch. 189, L. 1947; Secs. 5

to 7, Ch. 264, L. 1955), relating to dental health, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 5—VITAL STATISTICS

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-501 to 69-536. Repealed.**Repeal**

These sections (Secs. 1 to 35, Ch. 44, L. 1943; Sec. 1, Ch. 21, L. 1947; Secs. 8 to 10, Ch. 264, L. 1955; Sec. 14, Ch. 121, L.

1965; Sec. 1, Ch. 207, L. 1965), relating to vital statistics, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-536.1, 69-536.2. Repealed.**Repeal**

These sections (Secs. 1, 2, Ch. 137, L. 1963), relating to vital statistics on di-

vorces and annulments, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-537 to 69-539. Repealed.**Repeal**

These sections (Secs. 36 to 39, Ch. 44,

L. 1943), relating to vital statistics, were repealed by Sec. 223, Ch. 197, Laws 1967.

**CHAPTER 6—LOCAL BOARDS OF HEALTH IN CITIES AND TOWNS—
CREATION—POWERS AND DUTIES**

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-601 to 69-609. (2464 to 2472) Repealed.**Repeal**

These sections (Secs. 11 to 18, 24, Ch. 110, L. 1907; Sec. 1, Ch. 117, L. 1909),

relating to boards of health in cities and towns, were repealed by Sec. 223, Ch. 197, Laws 1967.

**CHAPTER 7—COUNTY BOARDS OF HEALTH AND COUNTY HEALTH
OFFICERS—DUTIES**

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-701 to 69-712. (2473 to 2484) Repealed.**Repeal**

These sections (Secs. 19 to 23, 28 to 31, 33 to 35, Ch. 110, L. 1907; Sec. 1, Ch. 93, L. 1931; Sec. 1, Ch. 26, L. 1933; Sec. 1,

Ch. 111, L. 1957), relating to county boards of health and health officers, were repealed by Sec. 223, Ch. 197, Laws 1967.

**CHAPTER 8—ESTABLISHMENT OF FULL-TIME
COUNTY AND DISTRICT HEALTH DEPARTMENTS
AND BOARDS OF HEALTH AUTHORIZED**

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-801 to 69-817. Repealed.**Repeal**

These sections (Secs. 1 to 14, Ch. 171, L. 1945; Secs. 1 to 3, Ch. 174, L. 1965),

relating to health units and boards of health, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 9—STATE EPIDEMIOLOGIST—EMPLOYMENT AND POWERS
(Repealed—Section 28, Chapter 264, Laws of 1955; Section 223, Chapter 197, Laws of 1967)

69-901, 69-902. (2540, 2541) Repealed.**Repeal**

These sections (Secs. 1, 2, Ch. 76, L. 1919; Sec. 11, Ch. 264, L. 1955), relating

to the state epidemiologist, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 10—STATE BOARD OF ENTOMOLOGY—DUTIES—INFANTILE PARALYSIS—ROCKY MOUNTAIN SPOTTED FEVER CONTROL

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-1001 to 69-1025. (2543 to 2561.6) **Repealed.****Repeal**

These sections (Secs. 1 to 9, Ch. 120, L. 1913; Secs. 1 to 10, Ch. 27, L. 1919;

Secs. 1 to 6, Ch. 24, L. 1923), relating to the state board of entomology, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 11—VENEREAL DISEASE CONTROL

(Repealed—Section 18, Chapter 107, Laws of 1965; Section 223, Chapter 197, Laws of 1967)

69-1101 to 69-1121. (2562 to 2577) **Repealed.****Repeal**

These sections (Secs. 1, 2, Ch. 86, L. 1919; Secs. 1 to 14, Ch. 106, L. 1919; Sec. 1, Ch. 126, L. 1943; Secs. 1 to 5, Ch. 119,

L. 1945; Secs. 12, 13, Ch. 264, L. 1955), relating to venereal disease control, were repealed by Sec. 18, Ch. 107, Laws 1965.

69-1122 to 69-1138. **Repealed.****Repeal**

These sections (Secs. 1 to 17, Ch. 107, L. 1965), relating to venereal disease con-

trol, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 12—SHODDY—CONTROL, MANUFACTURE AND SALE

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-1201 to 69-1220. (2615 to 2619) **Repealed.****Repeal**

These sections (Secs. 1 to 5, Ch. 146, L. 1915; Secs. 1 to 15, Ch. 70, L. 1941), re-

lating to shoddy control, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 13—PUBLIC AND OTHER WATER SUPPLIES—CONTROL BY STATE BOARD OF HEALTH

(Repealed—Section 15, Chapter 142, Laws of 1955; Section 223, Chapter 197, Laws of 1967)

69-1301 to 69-1320. (2641 to 2657) **Repealed.****Repeal**

These sections (Secs. 1 to 14, Ch. 177, L. 1907; Sec. 2, Ch. 66, L. 1911; Sec. 1, Ch. 26, L. 1917; Secs. 1 to 3, Ch. 126, L. 1917; Sec. 1, Ch. 34, L. 1925; Secs. 1 to 3,

Ch. 118, L. 1931; Secs. 1, 2, Ch. 127, L. 1945; Secs. 1 to 3, Ch. 157, L. 1965), relating to water supplies control, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-1326 to 69-1346. **Repealed.****Repeal**

These sections (Secs. 1 to 16, Ch. 142, L. 1955; Sec. 1, Ch. 151, L. 1959; Secs. 1 to 5, Ch. 95, L. 1961; Secs. 1 to 3, Ch.

164, L. 1963), the Water Pollution Act, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 14—CONSTRUCTION OF TEMPORARY FLOORS AND SCAFFOLDS

69-1401. (2672) Construction of scaffolds.

Common-law Defenses Foreclosed

In action against employers for personal injuries alleged to have resulted from a fall from a scaffold trial court was not in error in refusing defendants' instruction on assumption of the risk where the court gave defendants more than they were entitled to by granting them an instruction on contributory negligence over plaintiff's objection that this section had removed that defense. *Pollard v. Todd*, 148 M 171, 418 P 2d 869, 873.

The mandatory nature of the Scaffold Act (69-1401 to 69-1405) forecloses the common-law defenses of assumption of the risk, contributory negligence, and negligence of a fellow servant; but a defendant may escape liability upon proof that there was no violation of the statute or that the violation was not the proximate cause of the injury. *Pollard v. Todd*, 148 M 171, 418 P 2d 869, 873.

Intended Use of Scaffold

Owner was not liable to workman hired to construct addition to building for injury sustained by workman using structurally sound scaffold as means of access from one scaffold to another; statute requires that scaffold be structurally sound

in relation to purpose for which it is erected and is not violated when workman is injured while using scaffold for purpose for which it was not intended. *Joki v. McBride*, 150 M 378, 436 P 2d 78.

Negligence

In action against employers for personal injuries alleged to have resulted from a fall from a scaffold although plaintiff was entitled to an instruction that this section imposed an absolute duty upon the defendants and that a breach of that statutory duty was negligence per se, whether this negligence was the proximate cause of the injury was a question for the jury. *Pollard v. Todd*, 148 M 171, 418 P 2d 869, 873.

Purpose

The purpose of this section is to supplement the protection of the common law by providing criminal sanctions and imposing an absolute statutory duty upon the owners of real estate to protect workmen and others from the extraordinary hazards associated with scaffolds. *Pollard v. Todd*, 148 M 171, 418 P 2d 869, 873.

CHAPTER 15—BOILER INSPECTION—ENGINEERS LICENSE

Section 69-1501. Advisory committee on boiler rules—functions—appointment and terms of members—traveling expenses—rules and regulations—state inspectors of boilers, appointment, term and compensation—special boiler inspectors.

69-1503. Inspection of boilers—new boiler installations.

69-1512. Fees for inspection or examination.

69-1515. Boilers exempted from provisions—duty of owner of traction engine—notice of purchase of boiler.

69-1516. Certificates must be renewed yearly—disposition of moneys.

69-1501. (2712) Advisory committee on boiler rules—functions—appointment and terms of members—traveling expenses—rules and regulations—state inspectors of boilers, appointment, term and compensation—special boiler inspectors. (1) There is hereby created to advise the industrial accident board an advisory committee on boiler rules which shall hereafter be referred to as the committee, consisting of three (3) members who shall be appointed by the governor, one for two (2) years, one for three (3) years and one for four (4) years. At the expiration of their respective terms or when vacancies occur they or their successors identified with the same interest respectively shall be appointed by the governor for terms of four (4) years each. Of these appointed members one (1) shall be a practical steam operating engineer of boilers, one (1) shall represent the boiler insurance companies licensed to do

business in the state, and one (1) shall be a graduate mechanical engineer. The committee shall elect one (1) of its members as chairman and shall meet twice each year.

The members of the committee shall serve without salary but shall receive actual travel expenses in the same manner as other state officers.

The committee shall act in a technical advisory capacity to the industrial accident board and shall formulate definitions, rules and regulations for the safe construction, installation, inspection and repair of equipment covered by this act. The definitions, rules and regulations so formulated shall follow generally accepted nation-wide engineering standards as published by the American society of mechanical engineers.

(2) Appointment, term and compensation of boiler inspectors. The industrial accident board shall appoint not to exceed four (4) state inspectors of boilers and shall prescribe their term of office and fix their compensation.

In addition to the state boiler inspectors the industrial accident board shall issue to the inspectors of boiler insurance companies authorized to do business in the state, commissions, certificates or other recognition as special boiler inspectors and shall accept the inspection reports of such special inspectors as equivalent to those of the state inspectors, provided that each such special inspector shall hold a certificate as boiler inspector issued by the national board of boiler and pressure vessel inspectors. Such special inspectors shall receive no salary or expenses from the state nor shall the state collect inspection fees for inspections made by such special inspectors.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R. C. M. 1921; amd. Sec. 1, Ch. 77, L. 1967.

Amendments

The 1967 amendment rewrote this section. Prior to amendment it read, "The industrial accident board shall appoint not to exceed four inspectors of boilers and shall prescribe their term of office and fix their compensation."

69-1503. (2714) Inspection of boilers—new boiler installations. (1) The inspector of boilers must inspect all steam boilers and steam generators before the same are used, and all persons who bring into this state any boiler or boilers must notify the boiler inspector stating the number and kind of boilers, where they had heretofore been located, and where they are to be located and operated in this state, and must secure from the boiler inspector a certificate of inspection before said boilers are placed in operation, except in the case of new boilers, which must be inspected within ninety (90) days after they are put in use, and all boilers must be inspected at least once in every year, except boilers exempt under provisions of section 69-1515. Any person failing to give notice to the boiler inspector as herein provided, or who operates such boilers without a certificate from the boiler inspector, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense, or by imprisonment in the county jail for not less than thirty (30) nor more than ninety (90) days, or by both such fine and imprisonment.

(2) The inspector of boilers must subject all boilers, except those exempted by 69-1515, to hydrostatic pressure, which hydrostatic pressure must be thirty-three and one-third per cent ($33\frac{1}{3}\%$) greater than the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure. And the inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least two (2) inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water are such that the boilers cannot be injured thereby, and that such boilers and the steam connections may be safely employed without danger to life.

(3) New boiler installations. No boiler which does not conform to the rules and regulations formulated by the committee governing new construction and installation shall be installed and operated in this state after twelve (12) months from the date upon which the first rules and regulations under this act pertaining to new construction and installation shall have become effective, unless the boiler is of special design or construction, and is not covered by the rules and regulations, nor is in any way inconsistent with such rules and regulations, in which case a special installation and operating permit may at its discretion be granted by the committee.

History: Ap. p. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R. C. M. 1921; amd. Sec. 2, Ch. 77, L. 1967.

boilers exempt under provisions of section 69-1515" after "in every year" at the end of the first sentence in subsection (1); inserted "except those exempted by 69-1515" after "all boilers" in subsection (2); added subsection (3); and made minor changes in style by the addition of arabic numerals after the written numbers.

Amendments

The 1967 amendment added "except

69-1512. (2723) Fees for inspection or examination. (1) At the time of inspection, the state inspector of boilers shall collect fees for the inspection in accordance with the following schedule:

- | | |
|---|------|
| (a) Boilers with pressure under thirty (30) pounds per square inch | \$10 |
| (b) Boilers with pressure from thirty (30) pounds to one hundred (100) pounds per square inch | \$15 |
| (c) Boilers with pressure from one hundred (100) pounds to three hundred (300) pounds per square inch | \$20 |
| (d) Boilers with pressure over three hundred (300) pounds per square inch | \$30 |
| (e) Miniature boilers with pressure not in excess of one hundred (100) pounds per square inch | \$10 |
| (f) Steam traction | \$ 5 |
| (g) Operating certificate | \$ 4 |

In case of the failure of the owner, manager or person in charge of any boiler to pay such fee upon the demand of the inspector, said in-

spector is authorized to seal the firebox of said boiler, and said seal shall not be removed until said fee is paid and the written order of the inspector authorizing its removal is received by said owner or manager. Any person who tampers with or removes such seal without such written order shall be deemed guilty of a misdemeanor and punished as provided by section 69-1507.

(2). * * * [Same as parent volume.]

(3) Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule.

(a) First class	\$30
(b) Second class	\$20
(c) Third class	\$12
(d) Low pressure	\$ 8
(e) Traction	\$12
(f) Renewal of license	\$ 4
(g) Replacement of lost certificate	\$ 2

In case of the failure of any applicant to pass a successful examination, ninety (90) days must elapse before he can again be examined for license. But the inspector may grant to the applicant a lower grade of license than that applied for upon such examination. All certificates of inspection and engineers' licenses must be displayed in a conspicuous place in the engine room.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969.

Amendments

The 1967 amendment inserted "state" before "inspector" in the first sentence of subsection (1); and inserted "(90)" before "days must elapse" in the last paragraph of subsection (3) of this section.

The 1969 amendment, in subsection (1), doubled all the inspection fees listed in subdivisions (a) to (e), substituted "one hundred (100)" for "sixty-five (65)" before "pounds per square inch" in subdivision (e), and added subdivisions (f) and (g); and in subsection (3), doubled all the fees listed in subdivisions (a) to (g).

Repealing Clause

Section 2 of Ch. 255, Laws 1969 repealed all acts and parts of acts in conflict therewith.

69-1515. (2726) Boilers exempted from provisions—duty of owner of traction engine—notice of purchase of boiler. (1) This act shall not apply to boilers under federal control. The provisions of this act requiring inspections, inspection fees and certificates shall not apply to steam heating boilers carrying a pressure of not over fifteen (15) psi in private residences or apartments of six (6) or less families or to hot water heating or supply boilers operated at pressure not over one hundred and sixty (160) psi and temperatures not over two hundred fifty degrees Fahrenheit (250°F) when in private residences or apartments of six (6) or less families. Locomotives used on railroads conducting a general business in hauling passengers and freight do not come under the provisions of this article. But locomotives, commonly known as dinkey engines, used in operating logging or mining railroads, or any similar work where such locomotives are owned, leased or operated by any individual,

company, or corporation and are used in the business of such individual, company, or corporation, and not for general commercial purposes, shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction licenses. Nor are locomotive engineers, save as herein provided, or persons operating any of the engines or boilers herein, exempted from the operation of this article, required to procure license from the inspectors.

(2) It shall be the duty of the owner and user of any traction engine or boiler on wheels to notify the inspector of the location of such boiler on or before the first day of June of each year. Any owner or user of such traction engine or boiler on wheels who shall fail to notify the inspector as herein provided shall be deemed guilty of a misdemeanor. Any person purchasing any steam boiler whether traction or stationary boiler, shall be entitled to receive from the seller the certificates of inspection issued on such boiler and any person purchasing any steam boiler, whether traction or stationary, not exempted by the provisions of this section, shall, within ten (10) days after such purchase, report the fact of such purchase to the boiler inspector and notify such inspector where he intends to locate or operate said boiler. Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor. All other steam boilers and steam engines, save as herein exempted, come under the provisions of this article and persons operating same are required to hold the proper grade of license.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R. C. M. 1921; amd. Sec. 1, Ch. 140, L. 1923; amd. Sec. 4, Ch. 77, L. 1957.

Amendments

The 1967 amendment substituted the

first two sentences for "Boilers used for heating purposes in private residences, low pressure cast iron sectional boilers carrying not to exceed fifteen pounds steam pressure, and" before "Locomotives" in subsection (1); and inserted "(10)" before "days after such purchase" in the third sentence of subsection (2).

69-1516. (2727) Certificates must be renewed yearly—disposition of moneys. All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided. The fee for renewal is two dollars (\$2.00) in all cases. Any engineer failing to renew his license as herein provided, or within at least thirty days thereafter, must forward the fee for the original license of the same grade, before license can be reissued; provided, however, that any engineer whose license expired while such engineer was in the military or naval service of the United States shall have sixty days (60) from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee of one dollar.

All moneys collected by virtue of the provisions of this act must be paid into the state treasury once in each month and credited to the earmarked revenue fund.

History: En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R. C. M. 1921; amd. Sec. 2, Ch. 54, L. 1959; amd. Sec. 167, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "the earmarked revenue fund" for "the indus-

trial administration fund" at the end of the section.

CHAPTER 18—PUBLIC SAFETY IN CASE OF FIRE—FIRE ESCAPES AND APPARATUS—INSPECTIONS

Section 69-1801. Purpose of act.

69-1802. Application of act.

69-1808. Inspection by fire chiefs, county sheriff, deputy fire marshals—review of plans by fire marshal—permits—notice of inadequate equipment—compliance—enforcement.

69-1801. Purpose of act. The purpose and intent of this act is to provide for the public safety in case of fire in those occupancies specified in section 69-1802; to provide for fire escapes, fire-fighting apparatus, fire alarms; and to provide for inspection of such buildings and premises by specified officers.

History: En. Sec. 1, Ch. 279, L. 1947;
amd. Sec. 9, Ch. 229, L. 1967.

Amendments

The 1967 amendment substituted "occupancies" for "buildings" before "specified"; and deleted "open to or used by the public" after "section 69-1802."

69-1802. Application of act. Sections 69-1801 through 69-1810, R.C.M. 1947, apply to the following occupancies:

(1) Assembly occupancy means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social or recreational purposes; including among others,

armories	exhibition rooms	passenger stations
assembly halls	gymnasiums	pool rooms
auditoriums	lecture halls	recreation areas
bowling alleys	lodge rooms	restaurants
broadcasting studios	motion picture theaters	skating rinks
chapels	museums	television studios
churches	night clubs	theaters
club rooms	opera houses	taverns
dance halls		

(2) Business occupancy means the occupancy or use of a building or structure or any portion thereof for the transaction of business, or the rendering or receiving of professional services; including among others,

banks	office buildings	telephone exchanges
barber shops	radio stations	television stations
beauty parlors		

(3) Educational occupancy means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or of receiving educational instruction; including among others,

academies	libraries	schools
colleges		universities

(4) Industrial occupancy means the occupancy or use of a building or structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging or processing operations; including among others,

assembly plants	laboratories	processing plants
creameries	laundries	pumping stations
electric substations	manufacturing plants	repair garages
factories	mills	smoke houses
ice plants	power plants	work shops

(5) Institutional occupancy means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable or other care or treatment, or by persons involuntarily detained; including among others,

asylums	infirmaries	penal institutions
homes for the aged	jails	reformatories
hospitals	nurseries	sanitariums
houses of correction	orphanages	long-term care facilities
day care facilities	nursing homes	boarding homes

(6) Residential occupancy means the occupancy or use of a building or structure or any portion thereof by persons for whom sleeping accommodations are provided but who are not harbored or detained to receive medical, charitable or other care or treatment, or are not involuntarily detained, including among others,

apartments	dormitories	motels
club houses	dwellings	multifamily houses
convents	hotels	lodging houses

but not including single-family private houses.

History: En. Sec. 2, Ch. 279, L. 1947; amd. Sec. 10, Ch. 229, L. 1967.

Amendments

The 1965 amendment inserted "boarding and nursing homes for aged persons."

The 1967 amendment completely re-wrote this section. Prior to amendment, it read, "This act shall apply to hotels, night clubs, boarding or rooming houses, apartments, dormitories, office buildings, theaters, gymnasiums, any place of public amusement or used for public gatherings, colleges, schools, stadiums, amphitheaters, factories, hospitals, boarding and nursing homes for aged persons, motor courts, tourist inns, cabins, asylums, sanitariums, and all other places where large numbers of persons work, sleep, live, or congregate from time to time for any purpose but not to private residences."

Effective Date

Section 2 of Ch. 22, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 18, 1965.

69-1808. Inspection by fire chiefs, county sheriff, deputy fire marshals—review of plans by fire marshal—permits—notice of inadequate equipment—compliance—enforcement. (1) Within incorporated municipalities an educational or institutional occupancy, whether public or private may not be constructed or alterations made costing fifteen hundred dollars (\$1,500) or more unless sketches or architectural plans, whichever are available, are submitted for the construction or alteration to the state fire marshal and approved by him.

(2) Outside incorporated municipalities an assembly, educational or institutional occupancy may not be constructed or alterations made costing fifteen hundred dollars (\$1,500) or more unless a permit has been issued for the construction or alteration by the county commissioners. A fee of ten dollars (\$10) shall be paid to the county treasurer for each permit. A copy of said permit shall be furnished to the county assessor. No permit shall be issued until sketches or architectural plans, whichever are available, are submitted for the alteration or construction of the above occupancies to the state fire marshal and approved by him. The fire marshal and county sheriffs are responsible for enforcing the provisions of this subsection.

(3) A building designed for human occupancy owned or controlled by the state may not be constructed unless plans for the construction have been submitted to the state fire marshal and approved by him.

(4) It shall be the duty of the chief of the fire department of each municipality or district where a fire department is established and the county sheriff or deputy fire marshals where no fire department exists at least once each six (6) months to enter into all buildings and upon all premises within his jurisdiction for the purpose of the examination of such premises for violations of this act. Such inspection shall include but shall not be limited to testing fire alarms, fire extinguishers, examining fire hose and attachments, and other fire apparatus, and examining fire escapes provided for herein. Copies of such inspection shall be filed in the office of the state fire marshal on forms to be provided by him.

(5) When any building shall be found which required the erection of fire escapes, and upon which fire escapes have not been erected according to the provisions of this act, or if fire hoses, fire extinguishers, fire alarms, or other fire apparatus is found to be lacking or defective or not in good working condition, the person making such inspection or the state fire marshal shall serve a written notice upon the party or parties whose duty it is to erect such fire escapes, or maintain such fire apparatus. Said notice shall specify the time within which said fire escapes shall be erected, or such defective conditions be remedied, and in no case shall be more than ninety (90) days; and said notice shall be deemed to have been served if delivered to the person to be notified, or if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office, directed to the last known address of the person to be notified. In case of buildings within the term of this act, that are managed and controlled by a board of trustees, board of commissioners, or other governing body, to cause the erection of fire escapes on said buildings, as may be required; provided, that the occupant or lessee of any building who is required to erect fire escapes under the provisions of this act, shall be entitled to reimburse himself for the cost and expense of erecting said fire escapes out of the rent or lease money of said premises, and such reimbursement shall not be construed to be a breach of any existing lease, contract, or any covenant thereof nor grounds for any action or damage ouster.

(6) The state fire marshal shall have general charge and supervision of the enforcement of the provisions of this act and such officers as above

enumerated shall act under the general charge and supervision of the state fire marshal. Said officer shall assist the state fire marshal in giving effect to the terms and provisions of this act and shall be subject to his direction and to the rules adopted for the enforcement of this act.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967.

Amendments

The 1967 amendment added subsections (1), (2) and (3), designated the first paragraph of the old section as new subsection (4); in new subsection (4), substituted "municipality or district" for "city or village" after "department of each";

substituted "county sheriff or deputy fire marshals" for "mayor of the city or village" after "is established and the"; deleted "or the justice of the peace of a township in territory without the limits of a city or village" after "exists"; and designated the second paragraph of the old section as new subsection (5), and the third paragraph of the old section as new subsection (6).

CHAPTER 19—EXPLOSIVES—REGULATION OF MANUFACTURE, STORAGE AND SALE

Section 69-1910. License.

69-1910. (2795) License. Every person engaging in the keeping or storing of explosives shall pay an annual license fee for each magazine maintained, to be graduated by the state fire marshal according to the quantity kept or stored therein, of not less than five dollars (\$5.00) nor more than thirty dollars (\$30.00). Said license fee shall be payable in advance to the state fire marshal and by him paid to the state treasurer.

History: En. Sec. 10, Ch. 129, L. 1917; re-en. Sec. 2795, R. C. M. 1921; amd. Sec. 8, Ch. 121, L. 1965.

Amendment

The 1965 amendment increased the minimum license fee specified in the first sentence from \$1.00 to \$5.00 and the maximum fee from \$25 to \$30.

CHAPTER 20—MATERNITY HOSPITALS—LICENSE BY STATE BOARD OF HEALTH

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-2001 to 69-2004. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 66, L. 1941), relating to the licensing of ma-

ternity hospitals, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 21—STATE-WIDE BUILDING CONSTRUCTION STANDARDS

- Section 69-2104. Purpose of act.
 69-2105. Definitions.
 69-2106. State building code council — composition — terms — officers—reimbursement and per diem—meetings.
 69-2107. Applicable to public places outside municipalities—limitation of code.
 69-2108. State controller to administer act.
 69-2109. Duties of state controller.
 69-2110. Purposes of state building code.
 69-2111. Adoption of rules by council.
 69-2112. Municipal building codes—applicability of state code.
 69-2113. Permit necessary.

- 69-2114. Council's powers—variances—review—subpoena and related powers.
- 69-2115. Judicial review.
- 69-2116. Municipal appeal procedures.
- 69-2117. Municipal responsibilities and powers.
- 69-2118. Injunctive powers.
- 69-2119. Violation of order or codes a misdemeanor.
- 69-2120. Effect on other rules and standards—dangerous buildings—buildings under construction.

69-2101 to 69-2103. Repealed.

Repeal

Sections 69-2101 to 69-2103 (Secs. 1 to 3, Ch. 114, L. 1943; Secs. 12, 13, Ch. 229,

L. 1967), relating to doors on public buildings, were repealed by Sec. 27, Ch. 366, Laws 1969.

69-2104. Purpose of act. It is essential that building codes be adopted and enforced to protect the health and safety of the residents of this state, but buildings should be permitted to be constructed at the least possible cost consistent with recognized standards of health and safety. Among the factors complicating construction are various laws, ordinances, rules, regulations, and codes regulating the construction of buildings and the use of materials in those buildings. Many requirements are obsolete and unnecessarily complex. They serve to make construction more complex, without providing correlative benefits or safety to owners, builders, tenants, and users of buildings. It is the purpose of this act to institute the preparation of a state code of building construction to provide, so far as may be practicable, basic and uniform performance standards. Thus, while establishing reasonable safeguards for the health and safety of the occupants and users of buildings, the use of modern methods, devices, materials, and techniques will be encouraged. This should be effective in protecting the public interest in the field of construction.

History: En. Sec. 1, Ch. 366, L. 1969.

Title of Act

An act to establish a state-wide building construction standards; amending sections 66-2416, 66-2802, 69-4117, 69-5212,

69-5213, 69-5216, 82-1202, 82-1202.1, and 82-1202.2, R. C. M. 1947; repealing sections 66-2424, 66-2818, 69-2101 through 69-2103, 69-3701 through 69-3719, and 75-3103, R. C. M. 1947.

69-2105. Definitions. As used in this act, unless the context clearly indicates otherwise:

(1) "Council" means the state building code council created by this act.

(2) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (13) of this section.

(3) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(4) "Department" means the department of administration.

(5) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates and similar documents, prescribed or required by state or local building regulations.

(6) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(7) "Building" means a combination of any materials, whether mobile, portable, or fixed to form a structure and the related facilities for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof."

(8) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumb-waiters, escalators, and other mechanical additions or installations.

(9) "Construction" means the original construction, and equipment of buildings, and requirements or standards relating to or affecting materials used including provisions for safety and sanitary conditions.

(10) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm, or corporation, in control of a building.

(11) "Local legislative body" means the council or commission charged with governing the municipality.

(12) "State building code" means the state building code provided for in section 8 [69-2111] of this act or any portion of the code of limited application, and any of its modifications or amendments.

(13) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality. Upon request the council may approve extension of the jurisdictional area to include all or part of the area within four and one-half ($4\frac{1}{2}$) miles of the corporate limits of a municipality, measured in a straight line in a horizontal plane.

(14) "Public place" means any place which a municipality or state maintains for the use of the public, or a place where the public has a right to go and be.

History: En. Sec. 2, Ch. 366, L. 1969.

69-2106. State building code council — composition — terms — officers — reimbursement and per diem — meetings. (1) There is hereby created a state building code council of nine (9) members as follows:

(a) five (5) members appointed by the governor and who serve at his pleasure including one (1) member who is a licensed architect; one (1) member who is a professional engineer; one (1) member who is a building contractor; one (1) member who is a municipal building inspector; and one (1) member of the public who does not hold any

elective or other public office and who is not a licensed architect, professional engineer, or building contractor;

(b) four (4) members as follows:

(i) the executive officer of the department of health or a person designated by him;

(ii) one (1) member named by the state electrical board;

(iii) one (1) member named by the board of plumbing examiners;

(iv) the state fire marshal or a person appointed by him.

(2) Members appointed under subsection (1) (b) of this section shall serve for a term fixed by the appointing authority of not more than three (3) years and the members may be reappointed.

(3) The state controller shall serve as secretary of the council. The council shall elect a chairman from among its members.

(4) A member of the council shall receive reimbursement for necessary and actual expenses incurred in his official service on the council. Council members who are not government employees shall receive twenty dollars (\$20) per diem for each day of official service on the council.

(5) The council shall meet at the call of the chairman or at the written request of three (3) members, but it shall meet at least once each year.

History: En. Sec. 3, Ch. 366, L. 1969.

69-2107. Applicable to public places outside municipalities—limitation of code. (1) Outside municipalities and their jurisdictional area as defined by section 2 [69-2105], subsection (13) of this act, this act applies to "public places" as defined in section 2 [69-2105], subsection (15) [14] of this act.

(2) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the state controller for filing as a permanent record in his office. He shall submit the request to the council. The council may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings, according to use, or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing therein, or other factors which make differentiation or separate classification or regulation necessary, proper, or desirable.

History: En. Sec. 4, Ch. 366, L. 1969.

Compiler's Notes

Section 2 of Ch. 366, Laws 1969 did not

contain a subsection (15) and the compiler inserted the bracketed reference to subsection (14) in subsection (1) of this section.

69-2108. State controller to administer act. As directed by the council, the state controller shall administer this act through a division of the department of administration.

History: En. Sec. 5, Ch. 366, L. 1969.

69-2109. Duties of state controller. The state controller shall, under the guidance of the council:

(1) issue orders necessary to effectuate the purposes of this act and enforce the orders by all appropriate administrative and judicial proceedings;

(2) enter, inspect, and examine buildings or premises necessary for the proper performance of his duties under this act or appoint deputies to enter, inspect and examine;

(3) study the operation of the state building code, local building regulations, and other laws related to the construction of buildings to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health and safety;

(4) recommend tests or require the testing and approval of materials, devices, and methods of construction to ascertain their acceptability under the requirements of the state building code and issue certification of such acceptability;

(5) appoint experts, consultants, technical advisers, and advisory committees for assistance and recommendations relative to the formulation and adoption of the state building code;

(6) advise, consult, and co-operate with the council and other agencies of the state, local governments, industries, and interested persons or groups;

(7) make rules for the organization and internal management of the division.

History: En. Sec. 6, Ch. 366, L. 1969.

69-2110. Purposes of state building code. The state building code shall be designed to effectuate the general purposes of this act and the following specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for construction and construction materials, consonant with accepted standards of design, engineering and fire prevention practices;

(2) permit to the fullest extent feasible, the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings;

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements which tend to increase unnecessarily construction costs or retard unnecessarily the use of proven new materials which have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction;

(4) ensure that buildings constructed with public funds are accessible to, and functional for, physically handicapped persons where practicable and feasible.

History: En. Sec. 7, Ch. 366, L. 1969.

69-2111. Adoption of rules by council. (1) The council shall adopt by reference nationally recognized building codes in whole or in part, amend and repeal rules relating to the construction of all buildings or classes of buildings or the installation of equipment in those buildings, and may by rule prescribe standards or requirements for materials to be used in buildings including provisions dealing with safety and sanitation. The rules, when adopted as provided in this act, constitute the "state building code" and shall be acceptable for the buildings to which it is applicable.

(2) The council may hold hearings relating to the administration of this act and compel the attendance of witnesses and the production of evidence.

(3) Except as provided in subsection (4) of this section, no rule and no amendment or repeal of the state building code shall take effect until after a public hearing by the council. Notice of the time and place of the hearing shall be published at least three (3) times in at least two (2) newspapers of general circulation throughout the state. The last published notice shall appear not less than fifteen (15) days before the public hearing.

(4) If a hearing has been held by the state fire marshal, state plumbing board, state board of health, or state electrical board on a proposed rule relating to building and equipment standards in their respective fields a public hearing by the council is not required. The proposed rule is effective upon approval of the council and filing with the secretary of state as a part of the state building code.

(5) If a rule relating to building or equipment standards is proposed by the state fire marshal, state plumbing board, state board of health, or state electrical board which conflicts with the state building code, the council shall modify the proposed rule or the state building code to resolve the conflict after consultation with the state agencies affected.

(6) Nothing in this section requires a hearing prior to the issuance of an emergency order pursuant to the provisions of this act.

(7) The text of any proposed rule or modification, amendment, or repeal of a rule shall be made available for inspection at the office of the department and shall be distributed to state agencies, local building departments, state and municipal law officers, and to other interested persons or groups upon request.

(8) Every rule or modification, amendment, or repeal of a rule adopted by the council shall state the date on which it takes effect.

(9) Every rule or modification, amendment, or repeal of a rule, shall be certified by the council and transmitted to the secretary of state for filing in that office. Upon filing, the rule has the force and effect of law, and the state building code is amended to that extent. Copies shall be sent by the state controller to all state and municipal officers having jurisdiction over the construction of buildings affected. Copies shall also be mailed to any person upon request.

(10) The provisions of this section shall not apply to any rule applicable solely to the organization or internal management of the department.

History: En. Sec. 8, Ch. 366, L. 1969.

69-2112. Municipal building codes—applicability of state code. (1) The local legislative body of a municipality may adopt a municipal building code by ordinance to apply to the municipal jurisdictional area. A municipal building code shall require standards equal to those of the state building code or higher standards. A municipal building code must cover all general areas included in the state building code.

(2) If a municipality does not adopt a municipal building code as provided in subsection (1) of this section, the state building code applies within the municipal jurisdictional area.

(3) The council shall determine whether a municipal building code has standards equal to those of the state building code or higher standards and notify municipalities immediately if any municipal standards are below the state standards.

(4) If a municipal code is adopted, a copy of the code and any amendments to the code shall be filed with the council.

History: En. Sec. 9, Ch. 366, L. 1969.

69-2113. Permit necessary. After the effective date of this act, any person who desires to construct a building which is subject to the provisions of this act must apply for a permit from the appropriate authorities.

History: En. Sec. 10, Ch. 366, L. 1969.

Compiler's Notes

This act became effective July 1, 1969.

69-2114. Council's powers — variances — review — subpoena and related powers. (1) The council has the power on satisfactory proof, after a public hearing to:

(a) vary or modify, in whole or part, the application of any provision or requirement of the state building code if strict compliance would cause any undue hardship; but no variance or modification shall affect adversely provisions for health, safety, and security and equally safe and proper alternatives may be prescribed therefor;

(b) reverse, modify, or annul, in whole or part, any ruling, direction, determination, or order of any state agency affecting or relating to the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code;

(c) review within thirty (30) days after disapproval, any application for permission for the construction of a building pursuant to the provisions of the state building code, or plans or specifications submitted in connection therewith;

(d) reverse, modify, or annul the disapproval in whole or part;

(e) within thirty (30) days, make a determination that the application or plans or specifications are in compliance with the provisions of

the state building code. If this determination is made, the officer charged with the duty shall issue any permit, license, certificate, authorization, or other document required for the construction.

(2) An application for a variance, modification, reversal, annulment, or review may be made by any person aggrieved and pursuant to the procedure, conditions and rules as prescribed by the council. The council shall fix a time for the hearing of an application and shall require that due notice of the time and place of the hearing be given to the applicant, the state agency or other person involved, and other aggrieved persons concerned. Any person involved or any authorized representative of any state agency may appear at the hearing and be heard on the application.

(a) The council or its secretary has the power to administer oaths, certify all official acts and issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any hearing in any part of the state in like manner and to the same extent as courts of record. Service of said subpoenas shall be in a manner prescribed by the Montana Rules of Civil Procedure. In case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, the council, or its secretary may petition the district court in which the hearing is pending, setting forth that due notice has been given of the time and place fixed for the attendance of said witness, or the production of said papers, and that the witness has been served as required, and that the witness has failed and refused to attend, or produce the papers required by the subpoena before the council in the hearing in the notice and subpoena, or has refused to answer questions propounded to him in the course of such hearing, and ask an order of said court compelling the witness to attend or testify or produce said papers before the council. The court shall enter an order directing the witness to appear before the court at a time and date not more than ten (10) days from the date of the order and then and there show cause why he had not attended or testified or produced such papers before the council. A copy of such order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the council or its secretary and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order and testify or produce the required papers and upon failure to obey said order said witness shall be dealt with as for contempt of court.

(b) An application for a variance, modification, reversal, annulment, or review shall stay all proceedings in furtherance of the action appealed from unless there is a showing by the state agency that a stay would involve imminent peril to life or property.

(c) The council, in hearings conducted under this section, shall not be bound by common-law or statutory rules of evidence or by technical or formal rules of procedure.

(d) Applications shall be decided on promptly. In every case the council shall state generally the reason or reasons for its decision.

(e) All decisions of the council require concurrence of at least five (5) of its members to become effective.

(f) The decision of the council shall state the date on which it takes effect, and a certified copy thereof shall be filed as a public record in the office of the department and a copy shall be sent to the parties and to all state agencies affected.

(g) The council shall prepare a written record of the hearing. All evidence, including records and documents in the possession of the council of which it desires to avail itself in deciding the question shall be offered and made a part of the record of the hearing, and no other information or evidence shall be considered in the decision of the application.

History: En. Sec. 11, Ch. 366, L. 1969.

69-2115. Judicial review. (1) Within thirty (30) days after the mailing of notice of a decision by the council, any party in interest who appeared before the council may, in a proceeding in the nature of a writ of review, apply to the district court in the district in which the building is located for review of the decision of the council. Such application shall not operate to stay or postpone the enforcement of the decision of the council except as the council or court may direct.

(2) The application must be made on affidavit and the court may require notice of the application to be given to the council and all adverse parties, if any, or may grant an order to show cause why review should not be allowed.

(3) A copy of the application and all accompanying papers shall be served upon the council and upon all adverse parties, if any there shall be, in the manner as a summons in a civil action.

(4) The court, after proper showing, may order the council at a specified time and place to fully certify the entire record of the hearing had before it, including copies of all documents and records in its possession used in reaching its decision, that the same may be reviewed.

(5) When a full return has been made, the court must hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment either affirming, or annulling or modifying the proceedings below.

(6) Any party to the proceedings in the district court may appeal from its decision to the supreme court of the state of Montana in the same manner as appeals are now taken in other civil actions.

(7) Upon a final determination, the council shall enter a decision in accordance with the determination. A record of all decisions of the council, properly indexed, shall be kept in the office of the state controller and shall be open to public inspection at all times during business hours.

History: En. Sec. 12, Ch. 366, L. 1969.

69-2116. Municipal appeal procedures. If a municipality adopts a municipal building code, it shall also establish an appeal procedure by ordinance which is acceptable to the council. If a municipality does not

adopt a code, appeals on the application of the state building code within the municipal jurisdictional area shall be made to the council.

History: En. Sec. 13, Ch. 366, L. 1969.

69-2117. Municipal responsibilities and powers. The examination and approval or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings and the administration and enforcement of building regulations within the municipal jurisdictional area shall be the responsibility of the municipalities of the state. Each municipality may:

(1) Examine and approve or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state or municipal building code, and direct the inspection of the buildings during and in the course of construction.

(2) Require that construction of buildings be in accordance with the applicable provisions of the state or municipal building code, subject to the powers of variance or modification granted to the state building code council.

(3) Order in writing the remedying of any condition found to exist in, on, or about any building in violation of the state or municipal building code. Orders may be served upon the owner or his authorized agent personally or by sending by registered mail a copy of the order to the owner or his authorized agent at the address set forth in the application for permission for the construction of the building. Any local building department, by action of an authorized officer, may grant in writing such time as may be reasonably necessary for achieving compliance with the order.

(4) Issue certificates of occupancy, permits, licenses, and such other documents in connection with the construction of the buildings as required. A certificate of occupancy for a building constructed in accordance with the provisions of the state or municipal building code shall certify that the building conforms to the requirements of the building regulations applicable to it. Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is binding and conclusive upon all municipal agencies, as to all matters set forth and no order, directive, or requirement at variance therewith may be made or issued by any other state or municipal agency.

(5) Make, amend, and repeal rules for the administration and enforcement of the provisions of this section, and for the collection of reasonable fees, which shall be comparable to fees imposed or prescribed by existing local building regulations.

(6) Prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state or municipal building code.

History: En. Sec. 14, Ch. 366, L. 1969.

69-2118. Injunctive powers. The construction or use of the building in violation of any provision of the state or municipal building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located. This section will be governed by the Montana Rules of Civil Procedure.

History: En. Sec. 15, Ch. 366, L. 1969.

69-2119. Violation of order or codes a misdemeanor. Any person, served with an order pursuant to the provisions of this act, who fails to comply with the order not later than thirty (30) days after service or within the time fixed by the state controller or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code or a municipal building code is guilty of a misdemeanor.

History: En. Sec. 16, Ch. 366, L. 1969.

69-2120. Effect on other rules and standards—dangerous buildings—buildings under construction. (1) Rules and standards adopted by the state board of health, state electrical board, board of plumbing examiners, and state fire marshal which are in force on the effective date of this act shall continue in force unless changed by the council.

(2) Except as provided in subsection (3) of this section, building and equipment standards not in force on the effective date of this act shall not apply to buildings existing or under construction on July 1, 1969.

(3) If any building presents a clear and present danger to human life, this act shall apply although the buildings existed or were under construction on July 1, 1969.

(4) The council shall determine if a building is under construction on July 1, 1969, based upon uniform criteria established by the council.

History: En. Sec. 17, Ch. 366, L. 1969.

Compiler's Notes

This act became effective July 1, 1969.

CHAPTER 22—BLOOD PLASMA—PROCURING AND PROCESSING

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-2201, 69-2202. Repealed.

Repeal

These sections (Secs. 1, 2, Ch. 20, L.

1945), relating to blood plasma, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 23—ANATOMICAL GIFT ACT

- Section 69-2315. Definitions.
 69-2316. Persons who may execute an anatomical gift.
 69-2317. Persons who may become donees; purposes for which anatomical gifts may be made.
 69-2318. Manner of executing anatomical gifts.
 69-2319. Delivery of document of gift.
 69-2320. Amendment or revocation of the gift.
 69-2321. Rights and duties at death.
 69-2322. Uniformity of interpretation.
 69-2323. Short title.

69-2301 to 69-2310. Repealed.**Repeal**

These sections (Secs. 1 to 7, Ch. 102, L. 1943; Secs. 1 to 3, Ch. 172, L. 1949; Secs. 19 to 21, Ch. 41, L. 1963; Sec. 87,

Ch. 199, L. 1963), relating to the procurement of cadavers, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-2311 to 69-2314. Repealed.**Repeal**

Sections 69-2311 to 69-2314 (Secs. 1 to 4, Ch. 22, L. 1967), relating to the disposition of a person's own body for purposes

of education, research, or therapeutic use, were repealed by Sec. 10, Ch. 340, Laws 1969.

69-2315. Definitions. (a) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof.

(b) "Decedent" means a deceased individual and includes a still-born infant or fetus.

(c) "Donor" means an individual who makes a gift of all or part of his body.

(d) "Hospital" means a hospital licensed, accredited or approved under the laws of any state; includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(e) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

(f) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(g) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(h) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

History: En. Sec. 1, Ch. 340, L. 1969.

Title of Act

An act authorizing the gift of all or part

of a human body after death for specified purposes and repealing sections 69-2311, 69-2312, 69-2313 and 69-2314, R. C. M. 1947.

69-2316. Persons who may execute an anatomical gift. (a) Any individual of sound mind and 18 years of age or more may give all or any part of his body for any purpose specified in section 3 [69-2317], the gift to take effect upon death.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in section 3 [69-2317]:

- (1) the spouse,
- (2) an adult son or daughter,
- (3) either parent,
- (4) an adult brother or sister,
- (5) a guardian of the person of the decedent at the time of his death.

(c) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (b) may make the gift after or immediately before death.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by section 7 (d) [69-2321 (d)].

History: En. Sec. 2, Ch. 340, L. 1969.

69-2317. Persons who may become donees; purposes for which anatomical gifts may be made. The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(2) any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy; or

(3) any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(4) any specified individual for therapy or transplantation needed by him.

History: En. Sec. 3, Ch. 340, L. 1969.

69-2318. Manner of executing anatomical gifts. (a) A gift of all or part of the body under section 2 (a) [69-2316 (a)] may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under section 2 (a) [69-2316 (a)] may also be made by document other than a will. The gift be-

comes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two (2) witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of two (2) witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) The donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures, except as provided in section 4 [this section], subsection (c) and section 7 [69-2321], subsection (b). In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose, except as provided in section 4 [this section], subsection (c) and section 7 [69-2321], subsection (b).

(e) Any gift by a person designated in section 2 (b) [69-2316 (b)] shall be made by a document signed by him or made by his telegraphic recorded telephonic, or other recorded message.

History: En. Sec. 4, Ch. 340, L. 1969.

69-2319. Delivery of document of gift. If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

History: En. Sec. 5, Ch. 340, L. 1969.

69-2320. Amendment or revocation of the gift. (a) If the will, card, or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(1) the execution and delivery to the donee of a signed statement, or

(2) an oral statement made in the presence of two (2) persons and communicated to the donee, or

(3) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee, or

(4) a signed card or document found on his person or in his effects.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a), or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (a).

History: En. Sec. 6, Ch. 340, L. 1969.

69-2321. Rights and duties at death. (a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who tends the donor at his death, or, if none, the physician who certifies the death. The physician who tends the donor at his death, or, if none, the physician who certifies the death, shall not participate in the procedures for removing or transplanting a part.

(c) The provisions of this act are subject to the laws of this state prescribing powers and duties with respect to autopsies.

History: En. Sec. 7, Ch. 340, L. 1969.

69-2322. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 8, Ch. 340, L. 1969.

69-2323. Short title. This act may be cited as the Uniform Anatomical Gift Act.

History: En. Sec. 9, Ch. 340, L. 1969. "Sections 69-2311, 69-2312, 69-2313 and 69-2314, R. C. M. 1947, are repealed."

Repealing Clause

Section 10 of Ch. 340, Laws 1969 read

CHAPTER 24—LONG-TERM CARE FACILITIES

(Repealed—Section 17, Chapter 162, Laws of 1965; Section 223, Chapter 197, Laws of 1967)

69-2401 to 69-2406. Repealed.

Repeal

These sections (Secs. 1 to 6, Ch. 192, L. 1947; Sec. 1, Ch. 243, L. 1959), relating

to homes for the aged, were repealed by Sec. 17, Ch. 162, Laws 1965.

69-2407 to 69-2421. Repealed.**Repeal**

These sections (Secs. 1 to 15, Ch. 162, L. 1965), relating to long-term care facil-

ities for aged persons, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 25—RETIRING ROOM FOR EMPLOYEES SERVING FOOD TO THE PUBLIC REQUIRED

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-2501 to 69-2504. Repealed.**Repeal**

These sections (Secs. 1 to 4, Ch. 203, L. 1945), relating to sanitation facilities

for restaurant employees, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 26—MATS OR OTHER FLOOR COVERINGS REQUIRED IN CERTAIN ESTABLISHMENTS WHERE FOOD IS SERVED

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-2601 to 69-2603. Repealed.**Repeal**

These sections (Secs. 1 to 3, Ch. 202, L. 1945), relating to the installation of

mats on restaurant floors, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 28—REFRIGERATED LOCKERS—REGULATION OF

(Repealed—Section 4, Chapter 149, Laws of 1959; Section 16, Chapter 17, Laws of 1967, effective January 1, 1968)

69-2801 to 69-2813. Repealed.**Repeal**

These sections (Secs. 1 to 13, Ch. 220, L. 1947; Secs. 14 to 21, Ch. 264, L. 1955; Secs. 1 to 3, Ch. 149, L. 1959), relating to

refrigerated locker regulations, were repealed by Sec. 16, Ch. 17, Laws 1967, effective January 1, 1968.

69-2815, 69-2816. Repealed.**Repeal**

These sections (Secs. 15, 16, Ch. 220, L. 1947), relating to refrigerated locker regu-

lations, were repealed by Sec. 16, Ch. 17, Laws 1967, effective January 1, 1968.

CHAPTER 29—LICENSING AND SUPERVISION OF HOSPITALS AND RELATED FACILITIES

(Repealed—Section 9, Chapter 78, Laws of 1965; Section 223, Chapter 197, Laws of 1967)

69-2901 to 69-2910. Repealed.**Repeal**

These sections (Secs. 1 to 10, Ch. 269, L. 1947; Secs. 1 to 8, Ch. 78, L. 1965; Sec.

15, Ch. 121, L. 1965), relating to hospital licensing and supervision, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-2910.1. Repealed.**Repeal**

This section (Sec. 1, Ch. 78, L. 1953), transferring functions to the former ad-

visory hospital council, was repealed by Sec. 9, Ch. 78, Laws 1965.

69-2911 to 69-2918. Repealed.

Repeal

These sections (Secs. 11 to 17, 19, Ch. 269, L. 1947; Secs. 10 to 13, Ch. 78, L.

1965), relating to hospital licensing and supervision, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 30—MONTANA HOSPITAL, MEDICAL AND RELATED FACILITY SURVEY AND CONSTRUCTION ACT

(Repealed—Section 2, Chapter 78, Laws of 1953; Section 14, Chapter 77, Laws of 1965; Section 223, Chapter 197, Laws of 1967)

69-3001 to 69-3004. Repealed.

Repeal

These sections (Secs. 1 to 4, Ch. 270, L. 1947; Secs. 1 to 3, Ch. 215, L. 1955; Secs. 22, 23, Ch. 264, L. 1955; Secs. 1 to 4, Ch.

77, L. 1965), relating to hospital survey and construction, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-3006. Repealed.

Repeal

This section (Sec. 7, Ch. 270, L. 1947; Sec. 4, Ch. 215, L. 1955), relating to sur-

vay and planning activities, was repealed by Sec. 14, Ch. 77, Laws 1965.

69-3007 to 69-3016. Repealed.

Repeal

These sections (Secs. 8 to 17, Ch. 270, L. 1947; Secs. 5 to 10, Ch. 215, L. 1955; Sec. 68, Ch. 147, L. 1963; Secs. 5 to 12,

Ch. 77, L. 1965), relating to hospital survey and construction, were repealed by Sec. 223, Ch. 197, Laws 1967.

69-3016.1. Repealed.

Repeal

This section (Sec. 13, Ch. 77, L. 1965), relating to discrimination in subsidized

hospitals, was repealed by Sec. 223, Ch. 197, Laws 1967.

69-3017, 69-3018. Repealed.

Repeal

These sections (Sec. 18, Ch. 270, L. 1947; Sec. 1, Ch. 105, L. 1949; Sec. 11, Ch. 215, L. 1955), relating to state and

federal participation in hospital construction, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 31—CESSPOOLS, SEPTIC TANKS, PRIVIES AND SEWAGE LAGOONS

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-3101 to 69-3112. Repealed.

Repeal

These sections (Secs. 1 to 7, Ch. 154, L. 1951; Secs. 1 to 5, Ch. 203, L. 1961),

relating to sewage facilities, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 32—STATE BOARD OF HEALTH—MATERNAL AND CHILD HEALTH SERVICES—EDUCATIVE PROGRAM—SCHOOL NURSES—SUPERVISION BY BOARD—AUTHORITY OF COUNTIES AND SCHOOL BOARDS—SERVICES FOR CRIPPLED CHILDREN—EDUCATION FOR CHILDREN AND ADULTS IN USE AND ABUSE OF NARCOTICS

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-3201 to 69-3210. Repealed.

Repeal

These sections (Sec. 24, Ch. 264, L. 1955; Secs. 1 to 3, Ch. 197, L. 1963; Sec. 1, Ch. 106, L. 1965; Secs. 1, 2, Ch. 108,

L. 1965), relating to maternal and child health protection, were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 34—SANITARIANS

Section 69-3404. Fees.

69-3404. Fees. Applicants for registration shall pay a fee of twenty dollars (\$20.00) at the time of making application. A sanitarian registered under the provisions of this act may renew his certificate by paying an annual fee as set by the board, but not to exceed ten dollars (\$10.00). All fees collected shall be paid to the board of health and deposited by the board in the earmarked revenue fund for the use of the sanitarians registration council. All fees shall be due and payable on or before the first day of July for the current year for which the renewal certificate shall be issued. All certificates shall expire on the renewal date unless renewed prior to such date. Registrations which have lapsed for failure to pay renewal fees may be reinstated under regulations adopted by the council.

History: En. Sec. 4, Ch. 174, L. 1959;
amd. Sec. 119, Ch. 147, L. 1963.

Amendment

The 1963 amendment substituted "deposited by the board in the earmarked revenue fund for the use of the sanitarians

registration council" for "held in a special fund and shall be used to defray the cost of administration of this act in accordance with a budget developed by the council and the board" at the end of the third sentence.

CHAPTER 35—MOTORBOAT AND VESSEL REGULATION

Section 69-3502. Definitions.

69-3503. Operation of unnumbered motorboats or vessels prohibited.

69-3504. Identification number.

69-3504.1. Decals to be displayed.

69-3505. Equipment.

69-3508.1. Discharge of waste from boat prohibited.

69-3508.2. Penalty for discharge of waste from boat.

69-3517. Enforcement of act.

69-3502. Definitions. As used in this act, unless the context clearly requires a different meaning:

(1) "Vessel": for purposes of registration "vessel" shall mean those watercraft described under section 3 of public law 85-911, H.R. 11078 unless otherwise defined by the fish and game commission of the state of Montana; as pertains to the safety regulations of this act "vessel" means every description of watercraft other than a seaplane on the water capable of being used as a means of transportation on water.

(2) to (6). * * * [Same as parent volume.]

(7) The word "board" shall mean the fish and game commission of the state of Montana in all sections of this act, except for section 69-3504, in which section the word "board" shall mean the board of equalization of the state of Montana.

History: En. Sec. 2, Ch. 285, L. 1959;
amd. Sec. 1, Ch. 230, L. 1963.

Amendment

The 1963 amendment added the words "in all sections of this act, except for sec-

tion 69-3504, in which section the word 'board' shall mean the board of equalization of the state of Montana" at the end of paragraph (7); and made a minor change in punctuation.

69-3503. Operation of unnumbered motorboats or vessels prohibited.

Every motorboat or vessel on the waters of this state propelled by machinery of more than eight (8) horsepower shall be numbered. No person shall operate or give permission for the operation of any motorboat or vessel on such waters unless the motorboat or vessel is numbered in accordance with this act, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, unless (1) the certificate of number awarded to such motorboat or vessel is in full force and effect, and (2) the identifying number set forth in the certificate of number is displayed on such motorboat or vessel.

History: En. Sec. 3, Ch. 285, L. 1959; **Amendments**
amd. Sec. 1, Ch. 348, L. 1969.

The 1969 amendment substituted "eight (8)" for "ten" before "horsepower" in the first sentence.

69-3504. Identification number. (a) The owner of each motorboat or vessel requiring numbering by this state shall file an application for number, accompanied by a certificate of tax of personal property showing payment of tax on the motorboat or vessel for the current year, with the board or its designated representative, on forms approved by the board. The application shall be signed by the owner of the motorboat or vessel, and shall be accompanied by a fee of one (\$1) dollar. Upon receipt of the application in approved form and certificate hereinabove referred to, the board shall enter the same upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat or vessel and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat or vessel, the identification number in such manner as may be prescribed by rules and regulations of the board, in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat or vessel for which issued, whenever such motorboat or vessel is in operation.

(b) to (g). * * * [Same as parent volume.]

(h) Every certificate of number awarded pursuant to this act shall continue in full force and effect for a period not to exceed one (1) year, and shall be renewed annually unless sooner terminated or discontinued in accordance with the provisions of this act. Certificates of number may be renewed by the owner in the same manner provided for in the initial securing of the same. The board shall notify each owner of a registered vessel of expiration of registration a reasonable time prior to expiration of registration.

(i) to (l). * * * [Same as parent volume.]

(m) Fees collected under the provision of this section shall be transmitted to the state treasurer who shall deposit the fees in the motorboat certificate identification account of an earmarked revenue fund. These fees shall be used only for the administration and enforcement of

sections 69-3501 through 69-3508.1 and 69-3508.2 through 69-3518, R. C. M. 1947.

History: En. Sec. 4, Ch. 285, L. 1959; amd. Sec. 1, Ch. 219, L. 1961; amd. Sec. 1, Ch. 336, L. 1969; amd. Sec. 2, Ch. 348, L. 1969.

Compiler's Notes

This section was amended twice in 1969, once by Ch. 336 and once by Ch. 348. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a com-

posite section incorporating both amendments.

Amendments

Chapter 348, Laws 1969, in subsection (a), lowered the certificate of number fee from \$3 to \$1; and in the first sentence of subsection (h), substituted "one (1) year" for "three years" and inserted "and shall be renewed annually" before "unless sooner terminated."

Chapter 336, Laws 1969 added subsection (m).

69-3504.1. Decals to be displayed. (1) Every Montana boat numbered in accordance with the provisions of section 69-3504 shall be required to display decals thereon as visual proof the boat is currently registered. For this purpose the state board of equalization shall issue a pair of decals with all new certificates of number and renewals thereof.

(2) The decals shall be of a style and design prescribed by the state board of equalization, and shall be a color differing from the preceding year.

(3) Decals may be displayed by one of the following manners:

(a) One on each side of the bow immediately aft of the registration numbers.

(b) One on windshield and one facing aft on transom or superstructure so the one may be easily visible from forward and the other from aft of the boat.

(c) If windshield curves aft or has side glass facing port and starboard, one may be placed on each side so one may be easily visible from each side.

History: En. Sec. 3, Ch. 348, L. 1969.

Title of Act

An act to provide for the numbering of every motorboat or vessel propelled by machinery; to provide for issuance of decals; to provide for a yearly renewal of

such number and decal; and amending sections 69-3503 and 69-3504, R. C. M. 1947.

Effective Date

Section 4 of Ch. 348, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 14, 1969.

69-3505. Equipment. (1) Every vessel shall have aboard:

(a) One life preserver, buoyant vest, ring buoy or buoyant cushion of the type approved by the commandant of the United States coast guard in good and serviceable condition for each person on board, provided, in boats under twenty-six (26) feet in length, that any person or persons, twelve (12) years of age or younger, occupying a vessel while such vessel is in motion, shall have a life preserver of a type approved by the commandant of the United States coast guard securely fastened to his or her person.

(b) When in operation during hours of darkness, a light sufficient to make the motorboat's or vessel's presence and location known to any and all other vessels within a reasonable distance.

(c) If carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if not an entirely open motorboat or vessel, an efficient natural or mechanical ventilation system which shall be capable of removing resulting gases prior to, and during the time such motorboat or vessel is occupied by any person.

(d) All motorboats shall carry the minimum number of coast guard approved hand portable fire extinguishers, the number of which is to be determined by the Montana fish and game commission or a coast guard approved fixed fire extinguishing system, except, that motorboats less than twenty-six (26) feet in length of open construction, propelled by outboard motors, and not carrying passengers for hire need not carry such portable fire extinguishers or fire extinguishing systems.

(e) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel, equipped with an efficient flame arrester, backfire trap, or other similar device.

(f) The board is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation laws or with the navigation rules promulgated by the United States coast guard.

(g) No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

(2) No vessel shall be equipped in a manner which will permit discharge of inadequately treated sewage into waters of this state. No container of inadequately treated sewage shall be placed, left or discharged in or near waters of this state by anyone at any time. All toilets located on any vessel operated on waters of this state shall have securely affixed to the interior discharge opening of them an operating treatment device or retaining tank meeting the standards established by the state board of health.

History: En. Sec. 5, Ch. 285, L. 1959; amd. Sec. 1, Ch. 138, L. 1961; amd. Sec. 2, Ch. 230, L. 1963; amd. Sec. 1, Ch. 169, L. 1965.

former text as subsection (1); redesignated the former numbered paragraphs as lettered paragraphs of subsection (1); and added subsection (2).

Amendments

The 1963 amendment added paragraphs (5), (6), and (7), now paragraphs (e), (f), and (g) of subsection (1).

The 1965 amendment designated the

Effective Date

Section 3 of Ch. 230, Laws 1963 provided the act should be in effect from and after its passage and approval. Approved March 9, 1963.

69-3508.1. Discharge of waste from boat prohibited. No person shall discharge or cause, permit or suffer to be discharged, any garbage, refuse, waste or sewage from any boat into or upon the waters of any stream, river or lake within the boundaries of the state of Montana.

History: En. Sec. 2, Ch. 169, L. 1965.

Title of Act

An act to prevent water pollution by

prohibiting the discharge of sewage from vessels; and amending section 69-3505, R. C. M. 1947.

69-3508.2. Penalty for discharge of waste from boat. A person who is convicted of a violation of this act shall be punished by a fine of not more than twenty-five dollars (\$25).

History: En. Sec. 3, Ch. 169, L. 1965.

69-3517. Enforcement of act. It shall be the duty of the fish and game commission to enforce the sections of this law. The state fish and game director shall employ all the necessary personnel to comply with this section. All sheriffs and peace officers of the state of Montana shall have authority to enforce provisions of sections 69-3501 through 69-3518.

History: En. Sec. 17, Ch. 285, L. 1959;
amd. Sec. 2, Ch. 336, L. 1969.

Amendments

The 1969 amendment rewrote this section. For previous text, see parent volume.

CHAPTER 36—COUNTY AND MUNICIPAL AMBULANCE SERVICE

Section 69-3601. Establishment of service authorized—costs—petition.

69-3601. Establishment of service authorized — costs — petition. A county, city or town, acting through its governing body, may establish and maintain an ambulance service for such county, city or town. Any county, city or town may contract with any county, city or town to establish and maintain a joint ambulance service and to share the costs, such costs to be apportioned according to the benefits to accrue, the proportion to be paid by each to be fixed in advance by joint resolution by the respective governing bodies, if the governing body has received a petition signed by fifteen per centum (15%) of the electors registered to vote in the county, city or town at the last preceding general election, or in each of the counties, cities or towns wherein a joint ambulance service is being established. In addition to all other levies authorized by law, each county, city or town may levy an annual tax up to one (1) mill on the dollar of the taxable value of all taxable property within the county, city or town to defray the costs incurred in providing ambulance service.

History: En. Sec. 1, Ch. 238, L. 1961;
amd. Sec. 1, Ch. 162, L. 1967.

“fifteen per centum (15%) of the electors” after “signed by” to the end of this section for “fifty per centum (50%) of the taxpayers who are listed on the last-completed assessment roll.”

Amendments

The 1967 amendment ended the first sentence after “city or town”; substituted “Any county, city or town may contract with any county” for “and it may also contract with another county” after “county or town” to begin the second sentence; and substituted the passage beginning

Effective Date

Section 2 of Ch. 162, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 27, 1967.

CHAPTER 37—ACCOMMODATION OF HANDICAPPED PERSONS IN PUBLIC BUILDINGS

(Repealed—Section 27, Chapter 366, Laws of 1969)

69-3701 to 69-3719. Repealed.

Repeal

Sections 69-3701 to 69-3719 (Secs. 1 to 19, Ch. 223, L. 1965), relating to the ac-

commodation of handicapped persons in public buildings, were repealed by Sec. 27, Ch. 366, Laws 1969.

CHAPTER 38—PUBLIC SWIMMING POOLS AND BATHING PLACES

(Repealed—Section 223, Chapter 197, Laws of 1967)

69-3801 to 69-3813. Repealed.

Repeal

These sections (Secs. 1 to 13, Ch. 161, L. 1965), relating to public bathing places,

were repealed by Sec. 223, Ch. 197, Laws 1967.

CHAPTER 39—AIR POLLUTION

- Section 69-3904. Short title.
 69-3905. Declaration of policy and purpose.
 69-3906. Definitions.
 69-3907. Administration—state board of health.
 69-3908. Air pollution control advisory council—members tenure—compensation—meetings—minutes—powers.
 69-3909. Powers of board.
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 69-3913. Emissions prohibited.
 69-3914. Enforcement.
 69-3915. Emergency procedure.
 69-3916. Variances.
 69-3917. Hearings and judicial review.
 69-3918. Confidentiality of records.
 69-3919. Local air pollution control programs.
 69-3920. State and federal aid.
 69-3921. Penalties.
 69-3922. Limitations.
 69-3923. Classification of property for taxation.

69-3901 to 69-3903. Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 254,

L. 1965), relating to air pollution, were repealed by Sec. 22, Ch. 313, Laws 1967.

69-3904. Short title. This act shall be known and may be cited as the "Clean Air Act of Montana."

History: En. Sec. 1, Ch. 313, L. 1967.

Title of Act

An act providing for the conservation of the air resources of the state; providing

for prevention, abatement, and control of air pollution; providing penalties for violation; and repealing sections 69-3901, 69-3902, and 69-3903, R. C. M. 1947.

69-3905. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this act to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

(2) It is also declared that local and regional air pollution control programs are to be supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

(3) To these ends it is the purpose of this act to provide for a coordinated statewide program of air pollution prevention, abatement and

control; for an appropriate distribution of responsibilities among the state and local units of government; to facilitate co-operation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and to provide a framework within which all values may be balanced in the public interest.

History: En. Sec. 2, Ch. 313, L. 1967.

69-3906. Definitions. As used in this act: (1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property, or conduct of business.

(3) "Emission" means a release into the outdoor atmosphere of air contaminants.

(4) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity.

(5) "Advisory council" means the air pollution control advisory council created by this act.

(6) "Director" means the director of air pollution control, a position created by this act.

(7) "Board" means the state board of health.

History: En. Sec. 3, Ch. 313, L. 1967.

69-3907. Administration—state board of health. The state board of health shall have responsibility for the administration of this act and shall appoint a director of air pollution control to assist the board in its administration hereunder.

(1) The director shall be a person with at least two (2) years' experience or training in the field of air pollution control, experienced in administrative work and procedures, and he must be a graduate in engineering, medicine, or in physical, chemical or biological sciences.

(2) The salary of the director will be set and paid by the board.

(3) The powers and duties of the director shall be established and prescribed by the board in its rules, regulations and standards.

(4) The director may delegate to any employee of the board such duties and functions as he deems necessary for the proper and efficient administration of this act, and the director shall have authority, with the approval of the board, to hire additional employees and to discharge same for cause.

History: En. Sec. 4, Ch. 313, L. 1967.

69-3908. Air pollution control advisory council—members tenure—compensation — meetings — minutes — powers. (1) There is hereby created an air pollution control advisory council. The advisory council shall consist of eleven (11) members as follows:

The executive officer of the state board of health; and ten (10) members to be appointed by the governor as follows: a representative of labor; a representative of agriculture; a representative of the manufacturing industry; a representative of the fuel industry; a practicing physician licensed in Montana; a practicing veterinarian licensed in Montana; a practicing registered professional chemical or environmental engineer; a meteorologist; a conservationist; and an urban planning consultant. The chairman shall be elected by the advisory council from among this number.

(2) Members are appointed by the governor with the advice and consent of the senate. The terms of members shall be four (4) years except that of the initially appointed members, two (2) shall serve for one (1) year, two (2) shall serve for two (2) years, three (3) shall serve for three (3) years and three (3) shall serve for four (4) years as designated by the governor at the time of making the appointment.

(3) No additional compensation shall be allowed any members of the advisory council for services rendered who are employed by the state government. The ten (10) members appointed by the governor to serve on the advisory council shall each be paid, in addition to actual travel expenses, twenty-five dollars (\$25) per day for each day of actual services in the performance of their duties, and all members of the advisory council shall be reimbursed for travel and other necessary expenses incurred in their official duties as members of the advisory council. All expenses of members who are otherwise in the employ of the state government shall be paid from the appropriation to their respective agencies. The expenses and per diem of the members who are appointed by the governor shall be paid from funds made available to the state board of health.

(4) The advisory council shall hold at least two (2) regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him upon receipt of a written request signed by two (2) or more members of the advisory council. Notice of the time and place for all meetings shall be given in advance to each member of the advisory council by the secretary. A majority of the members of the advisory council shall constitute a quorum.

(5) The secretary of the advisory council shall be a member of the staff of the state board of health, designated by the executive officer of the board. The secretary shall keep all records of meetings of, and actions taken by, the council. He shall keep the advisory council advised as to actions taken by persons in response to recommendations and orders issued under authority of this act and shall perform other duties as determined by the advisory council, not inconsistent with rules, regulations, and policies adopted by authority of this act or specific authority otherwise given the advisory council.

(6) The advisory council may consider standards, rules, and regulations as provided in section 10 [69-3913] of this act and any other matter related to the purposes of the act, which may be submitted to it by

the board. It may make recommendations to the board on its own initiative concerning the administration of this act.

History: En. Sec. 5, Ch. 313, L. 1967.

69-3909. Powers of board. In addition to any other powers conferred on it by law the board shall:

(1) Adopt, amend, and repeal rules implementing and consistent with the provisions of this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, at any place or places designated by the board. The board may designate the director as the hearing officer at any hearing set by the board and authorize him to make rulings on evidence and conduct of the hearing. The board or the director as hearing officer may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) Issue such orders as may be necessary to effectuate the purposes of this act and enforce them by all appropriate administrative and judicial proceedings.

(4) Require access to records relating to emissions.

(5) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement, and control of air pollution in this state.

(7) Encourage voluntary co-operation by persons and affected groups to achieve the purposes of this act.

(8) Encourage local units of government to handle air pollution problems within their respective jurisdictions on a co-operative basis, and to provide technical and consultative assistance therefor. If local programs are financed with public funds, the board may contract with the local government to share the cost of the program. However, the state share may not exceed thirty per cent (30%) of the total cost.

(9) Encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, preventions, abatement, and control.

(10) Determine by means of field studies and sampling the degree of air contamination and air pollution in the state and the several parts thereof.

(11) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state and the several parts thereof, and make recommendations to appropriate public and private bodies with respect thereto.

(12) Establish ambient air quality standards for the state as a whole within ninety (90) days of passage and approval of this act.

(13) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution.

(14) Advise, consult, contract, and co-operate with other agencies of the state, local governments, industries, other states, interstate and inter-local agencies, the United States, and any interested persons or groups.

(15) Consult, upon request, with any person proposing to construct, install or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device, or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this act, rules in force pursuant thereto, and any other provision of law.

(16) Accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out any of the functions of this act. Funds received by the board pursuant to this section shall be deposited in the state treasury to the account of the board.

History: En. Sec. 6, Ch. 313, L. 1967.

69-3910. Classification and reporting. (1) The board may classify air contaminant sources which in its judgment may cause or contribute to air pollution according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class or classes. Such classifications shall be made with special reference to effects on health, economic and social factors, and physical effects on property, and may be applied to the state as a whole or to any designated area.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the board may require reporting shall make reports containing such information as may be required concerning location, size and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and any other matter relevant to air pollution which is available or reasonably capable of being assembled.

History: En. Sec. 7, Ch. 313, L. 1967.

69-3911. Permits. (1) The board may, by rule or regulations, prohibit the installation, alteration, or use of any machine, equipment, device or other article which it finds may cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants, unless a permit therefor has been obtained from it.

(2) The board may require that applications for such permits shall be accompanied by plans, specifications, and such other information as it deems necessary.

(3) The board shall provide for the issuance, suspension, revocation, and renewal of any permits which it may require pursuant to this section.

(4) If a permit is required, the board must decide within ninety (90) days after receiving application therefor, whether or not the permit will issue. If no decision is rendered within that time, permission shall be deemed to have been granted.

History: En. Sec. 8, Ch. 313, L. 1967.

69-3912. Inspections. (1) Any duly authorized officer, employee, or representative of the board may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which an air contaminant source is located or is being constructed or installed for the purpose of ascertaining the state of compliance with this act and rules in force pursuant thereto.

(2) No person shall refuse entry or access to any authorized representative of the board who requests entry for purposes of inspection, and who presents appropriate credentials. No person shall obstruct, hamper, or interfere with any such inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

History: En. Sec. 9, Ch. 313, L. 1967.

69-3913. Emissions prohibited. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate or control air pollution. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlling and no emission in excess thereof shall be lawful.

(2) In any area where the concentration of air pollution sources or of population, or where the nature of the economy of or land and its uses so require, the board may fix more stringent requirements governing the emission of air pollutants than those in effect pursuant to subsection (1) of this section.

(3) The board may by rule use any widely recognized measuring system for measuring emission of air contaminants.

(4) Should federal minimum standards of air pollution be set by federal law, the board may, if necessary in some localities of this state, set more stringent standards by rule or regulation.

History: En. Sec. 10, Ch. 313, L. 1967.

69-3914. Enforcement. (1) Whenever the board has reason to believe that a violation of any provision of this act or rule made pursuant thereto has occurred, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this act or rule alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order to take necessary corrective action within a reasonable period of time stated in the order. Any such order shall become final unless, no later than thirty (30) days after the date the notice is received, the person or persons named therein request in writing a hearing before the board. Upon receipt of such request, the board shall hold a hearing.

(2) If, after a hearing held pursuant to subsection (1) of this section, the board finds that a violation or violations have occurred, it shall either affirm or modify any order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the emissions involved or for the taking of such other corrective action as

it may deem appropriate. If, after hearing on an order contained in a notice the board finds that no violation is occurring, it shall rescind the order. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions.

(3) In lieu of issuing the order provided for in subsection (1) of this section, the board may either:

(a) Require that the alleged violator or violators appear before it for a hearing at a time and place specified in the notice, and answer the charges complained of; or

(b) Initiate action pursuant to section 18 [69-3921] of this act.

(4) Nothing in this act shall prevent the board from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) In connection with any hearing held pursuant to this section, the board may, and upon application by any party shall, compel the attendance of witnesses and the production of evidence on behalf of all parties.

History: En. Sec. 11, Ch. 313, L. 1967.

69-3915. Emergency procedure. (1) Any other provisions of law to the contrary notwithstanding, if the director finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the director shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. Upon issuance of any such order, the director shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of such hearing, and without adjournment thereof, the board shall affirm, modify, or set aside the order of the director.

(2) In the absence of any such generalized condition as that referred to in subsection (1) of this section, if the director finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately, without regard for the provision of section 11 [69-3914] of this act. In such event, the requirements for hearing, and affirmance, modification, or setting aside of orders set forth in subsection (1) of this section shall apply.

(3) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, whether such power is conferred by statute or constitutional provisions or inheres in the office.

History: En. Sec. 12, Ch. 313, L. 1967.

69-3916. Variances. (1) Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the

board for an exemption or partial exemption from rules or regulations governing the quality, nature, duration or extent of emissions of air pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant such exemption or partial exemption if it finds that:

(a) The emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) Compliance with the rules or regulations from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2) No exemption or partial exemption shall be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) No exemption or partial exemption pursuant to this section shall be granted for a period to exceed one (1) year, but any such exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, such complaint having been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the exemption or partial exemption. Immediately prior to application for renewal the applicant shall give public notice of such application in accordance with rules and regulations of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (a) of this section.

(4) An exemption, partial exemption or renewal thereof shall not be a right of the applicant or holder thereof but shall be in the discretion of the board. However, any person adversely affected by an exemption, partial exemption or renewal granted by the board may obtain judicial review thereof as provided by section 14 [69-3917] of this act.

(5) Nothing in this section and no exemption, partial exemption or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of section 12 [69-3915] of this act to any person or his property.

History: En. Sec. 13, Ch. 313, L. 1967.

69-3917. Hearings and judicial review. (1) No rule and no amendment or repeal thereof shall take effect except after public hearing on due notice, and after the advisory council has been afforded not less than thirty (30) days prior to publication of the proposed text to comment thereon. Such notice shall be given by public advertisement not less than twenty (20) or more than thirty (30) days prior to the date set for such hearing.

(2) Nothing in this section shall be construed to require a hearing prior to the issuance of an emergency order pursuant to section 12 [69-3915] of this act.

(3) Any person aggrieved by any order of the board or local control authority may apply for rehearing upon one or more of the following grounds, and upon no other grounds:

(a) The board or local control authority acted without or in excess of its powers;

(b) The order was procured by fraud;

(c) The order is contrary to the evidence;

(d) The applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing;

(e) Competent evidence was excluded to the prejudice of the applicant. The petition must be in such form and filed in such time as the board shall prescribe.

(4) (a) Within thirty (30) days after the application for rehearing is denied, or, if the application is granted, within thirty (30) days after the decision on the rehearing, any party aggrieved thereby may appeal to the district court of any judicial district of the state which is the situs of property affected by the order.

(b) The appeal shall be taken by serving a written notice of appeal upon the executive officer of the board, which service shall be made by the delivery of a copy of the notice to such officer, and by filing the original with the clerk of the court to which the appeal is taken. Immediately upon service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause, and shall cause a notice of the same to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence and whether or not the board made errors of law prejudicial to the appellant.

(5) Either the board [or] the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board and of the district court's review of that record.

History: En. Sec. 14, Ch. 313, L. 1967.

69-3918. Confidentiality of records. (1) Any records or other information concerning air contaminant sources which are furnished to or obtained by the board, and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, shall be only for the confidential use of the board in the administration of this act, unless the owner shall expressly agree to their publication or availability to the general public.

(2) Nothing contained in this section shall be construed to prevent the use of such records or information by the board in compiling or publishing

analyses or summaries relating to the general condition of the outdoor atmosphere, provided that such analyses or summaries do not identify any owner or operator or reveal any information made otherwise confidential by the provisions of this section.

History: En. Sec. 15, Ch. 313, L. 1967.

69-3919. Local air pollution control programs. (1) Any municipality or county may establish a local air pollution control program upon being petitioned by fifteen per cent (15%) of the qualified electors within its jurisdiction, and may thereafter administer within its jurisdiction said air pollution control program which:

(a) Provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by sections 10, 12 and 13 [69-3913, 69-3915 and 69-3916] of this act and rules issued thereunder;

(b) Provides for the enforcement of such requirements by appropriate administrative and judicial process;

(c) Provides for administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its program;

(d) Provided that such program shall be consistent with the intent and purposes of this act and is approved by the board after a public hearing conducted according to the provisions of section 6 [69-3909] of this act.

(2) If the board finds that the location, character, or extent of particular concentrations of population, or air contaminant sources, or geographic, topographic, or meteorological considerations, or any combinations of any of the foregoing, are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which such program is necessary and require it as the only acceptable alternative to direct state administration.

(3) (a) If the board has reason to believe that an air pollution control program in force pursuant to this section is inadequate to prevent and control air pollution in the jurisdiction to which such program relates, or that the program is being administered in a manner inconsistent with the requirements of this act, the board shall, on due notice, conduct a hearing on the matter.

(b) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates, or that it is not accomplishing the purposes of this act, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed sixty (60) days.

(c) If the jurisdiction fails to take such measures within the time required, the board shall administer within such jurisdiction all of the provisions of this act. The board's control program shall supersede all municipal or county air pollution laws, regulations, ordinances, and requirements in the affected jurisdiction. The cost of such a program shall be a charge on the municipality or county.

(4) If the board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond

the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may assume and retain control over that class of air contaminant source. No charge shall be assessed against the jurisdiction therefor. Findings made pursuant to this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(5) Any jurisdiction in which the board administers its air pollution control program pursuant to subsection (3) of this section may with the approval of the board establish or resume an air pollution control program which meets the requirements of subsection (1) of this section.

(6) Any municipality or county may administer all or part of its air pollution control program in co-operation with one (1) or more municipalities or counties of this state or of other states.

(7) Nothing in this act shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on the effective date of this act, provided that within two (2) years from such date any such program meets all requirements of this act for a local air pollution control program.

History: En. Sec. 16, Ch. 313, L. 1967.

69-3920. State and federal aid. (1) Any local air pollution control program meeting the requirements of this act and rules made pursuant thereto shall be eligible for state aid in an amount equal to thirty per cent (30%) of the locally funded annual operating cost thereof.

(2) Subdivisions of the state may make application for, receive, administer, and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control, provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this act and any other applicable requirements of law.

History: En. Sec. 17, Ch. 313, L. 1967.

69-3921. Penalties. (1) Any person who violates any provision of this act, or any rule in force thereunder or any order made pursuant thereto, other than section 15 [69-3918], shall be guilty of an offense and subject on account thereof to a fine not to exceed one thousand dollars (\$1000). Each day of violation shall constitute a separate offense.

(2) Any person who willfully violates section 15 [69-3918] of this act shall be guilty of an offense and subject on account thereof to a fine not to exceed one thousand dollars (\$1000).

(3) Action pursuant to subsections (1) or (2) of this section shall not be a bar to enforcement of this act, or of rules or orders made pursuant thereto, by injunction or other appropriate remedy. The board may institute and maintain in the name of the state any and all such enforcement proceedings.

(4) Nothing in this act shall be construed to abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of any person to damage or other relief on account of injury to

persons or property and to maintain any action or other appropriate proceeding therefor.

(5) All fines collected shall be deposited to the state general fund.

History: En. Sec. 18, Ch. 313, L. 1967.

69-3922. Limitations. Nothing in this act shall be construed to:

(1) Grant to the board any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops.

(2) Affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution.

(3) Supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety.

History: En. Sec. 19, Ch. 313, L. 1967.

69-3923. Classification of property for taxation. (1) Facilities, machinery or equipment, attached or unattached to real property, utilized to reduce, eliminate, control or prevent air pollution, shall be classified as Class Seven (7) for the purpose of taxation under the provisions of section 84-301.

(2) The decision, whether the facilities, machinery or equipment are utilized to reduce, eliminate, control or prevent air pollution, shall be made by the director and approved by the state board of equalization.

History: En. Sec. 20, Ch. 313, L. 1967.

Separability Clause

Section 21 of Ch. 313, Laws 1967 read: "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of

its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 22 of Ch. 313, Laws 1967 read "Sections 69-3901, 69-3902, and 69-3903, R. C. M. 1947, are hereby repealed."

CHAPTER 40—REFUSE DISPOSAL AREAS

- Section 69-4001.** Legislative findings and policy.
69-4002. Definitions.
69-4003. Dumping in an unlicensed area is prohibited.
69-4004. License required.
69-4005. State department of health to approve disposal area.
69-4006. Revocation of or refusal to renew license.
69-4007. Rules and regulations—inspections and recommendations.
69-4008. Landowner's rights preserved—publicly operated disposal areas.
69-4009. Penalty for violations.
69-4010. Repeal of conflicting acts—acts preserved.

69-4001. Legislative findings and policy. It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated refuse disposal areas. It is declared the public policy of this state to control refuse disposal areas to protect the public health and safety.

History: En. Sec. 1, Ch. 35, L. 1965.

Title of Act

An act providing for the protection of the public health by establishing controls of refuse disposal areas, defining terms used in the act, prohibiting dumping in unlicensed areas, requiring a license to be obtained from the local, county or district health officer, requiring the state

board of health to approve disposal areas, authorizing revoking the license, authorizing the state board of health to promulgate rules and regulations, excluding refuse disposal by an individual of his own refuse on his own property from this act, eliminating the payment of an annual fee by governmental agencies, setting forth payments, repealing all acts and parts of acts in conflict with this act.

69-4002. Definitions. Terms used in this act shall be defined as follows: (1) "Garbage," putrescible animal and vegetable wastes resulting from handling, preparation, cooking and consumption of food.

(2) "Refuse," all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings and solid market and solid industrial wastes.

(3) "Rubbish," nonputrescible solid wastes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, abandoned automobiles, tin cans, wood, glass, bedding, crockery and similar materials.

History: En. Sec. 2, Ch. 35, L. 1965.

69-4003. Dumping in an unlicensed area is prohibited. No person, partnership, company or corporation shall hereafter dispose of any garbage, rubbish or refuse in any place except as permitted under this act.

History: En. Sec. 3, Ch. 35, L. 1965.

69-4004. License required. Each year each person, partnership, company or corporation desiring to operate a refuse disposal area shall obtain a license for operating same from the local, county or district board of health having jurisdiction. To obtain a license to operate a disposal area, application to the local, county or district board of health having jurisdiction, must be made on forms provided by it. The application shall contain the name and residence of the applicant, the location of the proposed disposal area and such other information as the state department of health may by regulation require. There shall be paid to the local, county or district board of health with each application for such license or for renewal of such license, an annual license fee of twenty-five dollars (\$25). This fee is to be deposited in the general fund of the county in which the refuse disposal area is to be located.

History: En. Sec. 4, Ch. 35, L. 1965;
amd. Sec. 1, Ch. 349, L. 1969.

Amendments

The 1969 amendment substituted "state department of health" for "state board of health" in the third sentence.

69-4005. State department of health to approve disposal area. Upon receipt of the application, the local, county or district board of health having jurisdiction shall notify the state department of health who will then cause to be made an inspection of the proposed site and determine if the proposed operation can comply with this act and rules and regulations adopted pursuant thereto. The state department of health shall also inspect and approve plans which have been drawn up by the appli-

cant for the creation of a refuse disposal area. When the state department of health reports favorably upon the application, the local, county or district board of health having jurisdiction may issue a license to the applicant. All licenses shall expire one year after issuance, but may be renewed upon payment of an annual fee of twenty-five dollars (\$25).

History: En. Sec. 5, Ch. 35, L. 1965; amd. Sec. 2, Ch. 349, L. 1969.

Amendments

The 1969 amendment substituted "state

department of health" for "state board of health" where the references appear; inserted the second sentence; and substituted "may" for "shall" before "issue a license" in the third sentence.

69-4006. Revocation of or refusal to renew license. The local, county or district board of health having jurisdiction may revoke or refuse to renew any license after reasonable notice and hearing if it finds that the disposal area is not operated in a sanitary manner, as set forth by this law and by the rules and regulations adopted under this law.

History: En. Sec. 6, Ch. 35, L. 1965.

69-4007. Rules and regulations—inspections and recommendations. The state department of health is authorized to promulgate rules and regulations for the operation of refuse disposal areas. Said regulations shall be prepared and published and shall contain sanitary standards for disposal areas. The state department of health shall cause all licensed disposal areas to be inspected and recommended to the local, county or district board of health action which may be taken to enforce the provisions of this act.

History: En. Sec. 7, Ch. 35, L. 1965; amd. Sec. 3, Ch. 349, L. 1969.

Amendments

The 1969 amendment substituted "state department of health" for "state board of health" in the first and third sentences.

69-4008. Landowner's rights preserved—publicly operated disposal areas. This act shall not be construed to prohibit any person from disposing of his own garbage, rubbish or refuse upon his own land as long as such disposal does not create a nuisance. Any incorporated city, town, rural improvement district or county may establish a disposal area and operate same without paying the annual license fee, but must meet all other requirements of this act.

History: En. Sec. 8, Ch. 35, L. 1965; amd. Sec. 4, Ch. 349, L. 1969.

Amendments

The 1969 amendment inserted "his own" before "garbage" in the first sentence.

69-4009. Penalty for violations. Any person violating this act or regulations prescribed by the state department of health under this act, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty dollars (\$50), nor more than five hundred dollars (\$500). Each day upon which a violation of this act occurs shall be considered a separate offense.

History: En. Sec. 9, Ch. 35, L. 1965; amd. Sec. 5, Ch. 349, L. 1969.

Amendments

The 1969 amendment substituted "state department of health" for "state board of health."

69-4010. Repeal of conflicting acts—acts preserved. All acts and parts of acts in conflict herewith are hereby repealed, except that section 32-1014 and section 94-3542, R. C. M. 1947, shall in no way be affected by this act.

History: En. Sec. 10, Ch. 35, L. 1965.

Compiler's Notes

Section 32-1014, referred to in this section, was repealed by Sec. 12-109, Ch. 197, Laws 1965.

Separability Clause

Section 11 of Ch. 35, Laws 1965 read

"It is the intent of the legislative assembly that if a part of this is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect, and all valid applications that are separable from the invalid applications."

CHAPTER 41—STATE BOARD OF HEALTH

Section 69-4101. State department of health established.

69-4102. Definitions.

69-4103. State board of health—members—appointment—qualifications—terms.

69-4104. State board of health—officers—meetings—quorum—compensation.

69-4105. Administration of laws relating to public health by department.

69-4106. Functions, powers and duties of state board.

69-4107. Executive officer—appointment—compensation—qualifications—temporary executive order.

69-4108. Executive officer—removal—procedure.

69-4109. Executive officer—powers and duties.

69-4110. Functions, powers and duties of department.

69-4110.1. Comprehensive state health planning powers and duties of department.

69-4111. Legal adviser to state board and department.

69-4112. Quarantine measures—adoption and enforcement.

69-4113. Executive officer authorized to act for state board in emergency.

69-4114. Public officials and corporations to furnish public health information upon request.

69-4115. Information on infant morbidity and mortality—limited use—identity of persons studied confidential.

69-4116. Newborn infants—test for phenylketonuria required.

69-4117. Schoolhouses—rules for lighting, heating, ventilation and sanitary arrangements.

69-4118. Sanitary inspections of schoolhouses, churches and other facilities for assemblages of persons.

69-4101. State department of health established. There is a state department of health within the executive branch of state government.

History: En. Sec. 1, Ch. 197, L. 1967.

Title of Act

An act for the codification and general revision of the laws relating to the state board of health; amending sections 27-112 and 27-202, R. C. M. 1947, and repealing sections 69-101 through 69-103, 69-105, 69-105.1, 69-105.2, 69-105.3, 69-105.4, 69-107, 69-109 through 69-127, 69-201 through 69-208, 69-301, 69-303 through 69-319, 69-401 through 69-404, 69-501 through 69-536, 69-536.1, 69-536.2, 69-537 through 69-539, 69-601 through 69-609, 69-701 through 69-712, 69-801 through 69-817, 69-901, 69-902, 69-1001 through 69-1025, 69-1122 through 69-1138, 69-1201 through 69-1220, 69-1301 through 69-1320, 69-1326 through 69-1346, 69-2001 through 69-2004, 69-2201,

69-2202, 69-2301 through 69-2310, 69-2407 through 69-2421, 69-2501 through 69-2504, 69-2601 through 69-2603, 69-2901 through 69-2918, 69-3001 through 69-3004, 69-3007 through 69-3016, 69-3016.1, 69-3017, 69-3018, 69-3101 through 69-3112, 69-3201 through 69-3210, 69-3801 through 69-3813, R. C. M. 1947.

Codification

Chapter 197, Laws 1967, contained the following preamble: "It is the intent of the legislative assembly that all non-amendatory sections of this bill be codified in Title 69, Revised Codes of Montana, 1947, with the subject matter under each heading assigned to a separate chapter of that title."

69-4102. Definitions. As used in this act [69-4101 to 69-5701], unless the context clearly indicates otherwise;

- (1) "State board" means the state board of health;
- (2) "Department" means the state department of health;
- (3) "Executive officer" means the director of the state department of health;
- (4) "Communicable disease" means a disease designated communicable by the state board.

History: En. Sec. 2, Ch. 197, L. 1967.

69-4103. State board of health—members—appointment—qualifications—terms. (1) The state board consists of seven (7) members appointed by the governor for terms of seven (7) years with the consent of the senate. An appointment to replace a member whose term has expired shall be for seven (7) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term.

- (2) Membership of the state board shall include:
 - (a) three (3) persons who have the degree of doctor of medicine;
 - (b) one (1) person who has the degree of doctor of dental surgery;
 - (c) three (3) persons who have demonstrated intelligent and active interest in the field of public health who do not hold the degree of doctor of medicine or doctor of dental surgery.

(3) Terms of members holding office when this act becomes effective shall not be affected.

History: En. Sec. 3, Ch. 197, L. 1967.

69-4104. State board of health—officers—meetings—quorum—compensation. (1) The state board shall elect a chairman and other necessary officers and may adopt bylaws governing meetings. The executive officer shall serve as secretary to the state board. Four (4) members constitute a quorum for the transaction of business.

(2) The state board shall meet once every two (2) months and may hold additional meetings on the call of the chair, at the request of the executive officer, or at the request of a majority of the members. If a member has three (3) unexcused absences from meetings in any calendar year, his position is vacant and the governor shall appoint a person to replace him.

(3) State board members shall receive twenty dollars (\$20) a day and be reimbursed for actual and necessary expenses when attending meetings or in the discharge of other duties assigned by the state board.

(4) In suits or proceedings in which state board actions are the subject of inquiry, meetings shall be deemed to have been called and held unless the contrary is proven.

History: En. Sec. 4, Ch. 197, L. 1967.

69-4105. Administration of laws relating to public health by department. With policy guidance of the state board the department has responsibility for administration of laws relating to public health including but not limited to, laws on:

- (1) industrial hygiene;

- (2) tuberculosis control;
- (3) vital statistics;
- (4) local boards of health;
- (5) venereal disease control;
- (6) shoddy control;
- (7) public and other water supplies;
- (8) cadavers;
- (9) hospitals, hospital related facilities, and long-term care facilities;
- (10) hospital survey and construction;
- (11) cesspools, septic tanks, privies, sewage lagoons, sewage treatment plants and stream pollution;
- (12) public swimming pools and public bathing places;
- (13) pure foods and drugs;
- (14) insecticides, fungicides, and rodenticides;
- (15) refuse disposal areas;
- (16) communicable diseases;
- (17) tourist camp grounds;
- (18) hotels.

History: En. Sec. 5, Ch. 197, L. 1967.

69-4106. Functions, powers and duties of state board. (1) The state board shall:

- (a) advise the executive officer in all public health matters;
 - (b) hold hearings, administer oaths, subpoena witnesses, and take testimony in all matters relating to the duties of the state board or the department;
 - (c) bring actions in court for enforcement of health laws and defend actions brought against the state board or department;
 - (d) after consultation with the executive officer, adopt and enforce rules and standards for carrying out provisions of section 5 [69-4105] of this act and for the preservation of public health and prevention of disease;
 - (e) make rules covering the qualifications and professional activities, duties, services, and administration of school and local public health nurses;
 - (f) make rules for the transportation of dead bodies;
 - (g) report as provided in section 2 [82-4002] of this act.
- (2) The state board may accept and expend federal funds available for public health services.

History: En. Sec. 6, Ch. 197, L. 1967;
amd. Sec. 28, Ch. 93, L. 1969.

Amendments

The 1969 amendment, in subdivision (1)

(g), substituted provision for reporting requirements of section 82-4002 for former provision requiring reports to governor and legislature in each odd-numbered year.

69-4107. Executive officer — appointment — compensation — qualifications—temporary executive order. (1) The state board shall appoint the executive officer who is the chief executive and administrative officer of the department. The state board shall fix his salary.

(2) The executive officer shall:

- (a) have a degree of doctor of medicine;
- (b) have successfully completed at least one (1) year of graduate study in an approved school of public health;
- (c) have had at least two (2) years experience as a full-time public health officer;
- (d) be eligible for a license by the board of medical examiners;
- (e) receive a license from the board of medical examiners not later than six (6) months after his appointment.

(3) The state board may appoint a temporary executive officer for a period of not more than one (1) year. A person appointed temporary executive officer must be licensed to practice medicine in Montana, and must have at least five (5) years active experience in that profession.

(4) The state board may contract with a person to serve as executive officer, or may appoint an executive officer for a term of not more than ten (10) years.

History: En. Sec. 7, Ch. 197, L. 1967.

69-4108. Executive officer—removal—procedure. The executive officer may be removed in the following way:

(1) the state board shall present him with a written statement of the charges against him;

(2) twenty (20) or more days after written notice is given to the executive officer, the state board shall hold a hearing to consider the charges;

(3) before the executive officer may be removed, a majority of state board members must agree that the charges were sustained by evidence presented at the hearing.

History: En. Sec. 8, Ch. 197, L. 1967.

69-4109. Executive officer—powers and duties. (1) The executive officer shall:

- (a) execute policies established by the board;
- (b) not engage in the private practice of medicine;
- (c) with approval of the state board, appoint employees of the department and fix their compensation under a merit system of personnel administration;
- (d) direct public health programs and internal affairs of the department.

(2) The executive officer may employ persons on a temporary or part-time basis, or in a consulting capacity, who are not under a merit system of personnel administration.

History: En. Sec. 9, Ch. 197, L. 1967.

69-4110. Functions, powers and duties of department. With policy guidance of the state board, the department shall:

- (1) establish divisions, sections, or units which are necessary to carry out the responsibilities of the department;
- (2) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(3) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(4) at the request of the governor administer any federal health program for which responsibilities are delegated to states;

(5) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary, and at other times on request of the governor;

(6) after each inspection made under subsection (5) of this section, submit a written report on sanitary conditions to the governor and to the director of institutions or executive secretary of the Montana university system and include recommendations for improvement in conditions, if necessary;

(7) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(8) organize laboratory services and provide equipment and personnel for those services;

(9) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(10) develop and administer a program to protect the health of mothers and children;

(11) conduct health education programs;

(12) supervise school and local public health nurses in the performance of their duties;

(13) consult with the superintendent of public instruction on health measures for schools;

(14) develop and administer a program for services to handicapped children including diagnosis, medical, surgical and corrective treatment, and after-care and related services;

(15) supervise local boards of health.

History: En. Sec. 10, Ch. 197, L. 1967.

69-4110.1. Comprehensive state health planning powers and duties of department. The state department of health is hereby established as the sole and official state agency to administer the state program for comprehensive health planning and is hereby authorized to prepare a plan for comprehensive state health planning. The department is authorized to confer and co-operate with any and all other persons, organizations, or governmental agencies that have an interest in public health problems and needs. The state department of health, while acting in this capacity as the sole and official state agency to administer, and to supervise the administration of, the official comprehensive state health plan, is designated and authorized as the sole and official state agency to accept, receive, expend and administer any and all funds which are now available, or which may be donated, granted, bequested or appropriated

to it, for the preparation and administration, and the supervision of the preparation and administration of the comprehensive state health plan.

History: En. 69-4110.1 by Sec. 1, Ch. 184, L. 1969.

Title of Act

An act to amend chapter 41, Title 69, of the R. C. M. 1947, as amended, by adding thereto a new section to be numbered 69-4110.1; establishing the state department of health as the sole and official state agency to administer the state program for comprehensive health planning, and authorizing it to prepare a plan for comprehensive state health planning; authorizing said department to co-operate with all other persons and entities that have an interest in public health problems

and needs; and designating and authorizing said department as the sole and official agency of this state to accept, receive, expend and administer funds now available or which may become available to the state of Montana for the preparation and administration and supervision of the preparation and administration of the comprehensive state health plan; and containing a repealing clause.

Repealing Clause

Section 2 of Ch. 184, Laws 1969 repealed all acts and parts of acts in conflict therewith.

69-4111. Legal adviser to state board and department. The attorney general is legal adviser to the state board and department. If the county attorney fails to act, with the approval of the attorney general the state board may retain special counsel and compensate him from general appropriations to the state board. Either the county attorney of any county where a cause of action arises or the state board may bring any action necessary to abate, restrain, or prosecute the violation of public health laws.

History: En. Sec. 11, Ch. 197, L. 1967.

69-4112. Quarantine measures—adoption and enforcement. With approval of the state board, the department may adopt and enforce quarantine measures against any state, county, or municipality to prevent the spread of communicable disease. Any person who does not comply with quarantine measures shall, upon conviction, be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). Receipts from fines shall be deposited in the state general fund.

History: En. Sec. 12, Ch. 197, L. 1967.

69-4113. Executive officer authorized to act for state board in emergency. If a communicable disease endangers public health and the state board must meet to make a decision concerning the danger, the executive officer shall act for the state board until a meeting has been held.

History: En. Sec. 13, Ch. 197, L. 1967.

69-4114. Public officials and corporations to furnish public health information upon request. On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department.

History: En. Sec. 14, Ch. 197, L. 1967.

69-4115. Information on infant morbidity and mortality—limited use—identity of persons studied confidential. (1) If information on infant morbidity and mortality will be used to reduce those problems, data re-

lating to the condition and treatment of any person may be given to the department, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or to an in-hospital staff committee.

(2) A person furnishing information under subsection (1) of this section is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) of this section may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. However, a summary of studies based on the data may be released for general publication.

(4) The identity of persons whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on these data are privileged communications and may not be used as evidence in any legal proceeding. Any attempt to use, or offer to supply the data or studies, without consent of the person treated or his legal representative, is prejudicial error resulting in a mistrial.

History: En. Sec. 15, Ch. 197, L. 1967.

69-4116. Newborn infants—test for phenylketonuria required. Persons in charge of any facility caring for newborn infants and persons responsible for the registration of births shall insure that each infant has a test for phenylketonuria administered under rules adopted by the state board.

History: En. Sec. 16, Ch. 197, L. 1967.

69-4117. Schoolhouses—rules for lighting, heating, ventilation and sanitary arrangements. (1) The state board shall adopt rules for lighting, heating, ventilation, plumbing and sanitary arrangements for schoolhouses. Before any schoolhouse is constructed, plans must be submitted to the department for approval. A schoolhouse must conform to the rules adopted by the state board before being used.

(2) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the state building code council and filing with the secretary of state.

History: En. Sec. 17, Ch. 197, L. 1967; **Amendments**
amd. Sec. 20, Ch. 366, L. 1969.

The 1969 amendment designated the former section as subsection (1) and added subsection (2).

69-4118. Sanitary inspections of schoolhouses, churches and other facilities for assemblages of persons. (1) The department shall make sanitary inspections of schoolhouses, churches, theaters, and other buildings or facilities where persons assemble. If the facility is found unsanitary, the department shall direct that conditions be corrected within a reasonable time. If the unsanitary conditions are not corrected within the time specified, the building or facility is a public nuisance.

(2) Either the state board or a local board of health shall bring an action to correct the unsanitary conditions in the way provided by law for abating a public nuisance.

History: En. Sec. 18, Ch. 197, L. 1967.

CHAPTER 42—INDUSTRIAL HYGIENE

Section 69-4201. "Occupational disease" defined.

69-4202. Hazardous conditions—correction or prevention.

69-4203. Functions, duties and powers of state department of health.

69-4204. Duty of physicians and others to report occupational disease case
—reports private records.

69-4205. Penalty.

69-4201. "Occupational disease" defined. As used in this chapter "occupational disease" means an illness that:

- (1) arises from the person's employment;
- (2) is caused by exposure to a substance or industrial practice which is hazardous to health;
- (3) has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases;
- (4) is not the result of a person's contacts or activities outside his employment.

History: En. Sec. 19, Ch. 197, L. 1967.

69-4202. Hazardous conditions—correction or prevention. The state board of health shall adopt rules and approve orders to correct or prevent conditions which are hazardous to health at any place of employment.

History: En. Sec. 20, Ch. 197, L. 1967.

69-4203. Functions, duties and powers of state department of health. The state department of health shall:

- (1) make studies, make recommendations, and issue orders approved by the state board on industrial hygiene and occupational diseases;
- (2) keep complete records of its studies, recommendations, or orders;
- (3) investigate the conditions of work at any place of employment at any time;
- (4) report the findings of investigations to the industry concerned and co-operate with the industry in preventing or correcting conditions which are hazardous to health;
- (5) enforce provisions of this chapter, and rules adopted by the state board;
- (6) prepare forms and instructions for reporting occupational diseases and furnish them to physicians, hospitals, clinics, industrial plants, and labor unions on request;
- (7) investigate reports of deaths from occupational disease to determine the correctness of the report and the cause of the disease;

(8) at least once each year compile statistical summaries on occupational diseases reported to the department.

History: En. Sec. 21, Ch. 197, L. 1967.

69-4204. Duty of physicians and others to report occupational disease case—reports private records. (1) Before the eleventh day after discovery, every physician, person in charge of a hospital or clinic, or state employee shall report an occupational disease to the department. The report shall be on forms prescribed by the department and include:

- (a) name and address of the diseased person;
- (b) name and business address of the employer;
- (c) business of the employer;
- (d) place of the person's employment;
- (e) length of time the person was employed at the place where he became ill;

(f) nature of the disease;

(g) other information required by the department.

(2) Reports made under this section are neither public records nor open to public inspection. They are not admissible as evidence in any legal action or at a hearing under workmen's compensation laws of this state.

History: En. Sec. 22, Ch. 197, L. 1967.

69-4205. Penalty. (1) A person is guilty of a misdemeanor if he:

- (a) does not make a report required by this chapter;
- (b) does not comply with a rule adopted by the state board;
- (c) does not comply with an order approved by the state board;
- (d) willfully makes a false statement in a report.

(2) On conviction, he shall be fined not more than five hundred dollars (\$500).

History: En. Sec. 23, Ch. 197, L. 1967.

CHAPTER 43—TUBERCULOSIS CONTROL

- Section 69-4301. Public policy of the state.
- 69-4302. Definitions.
- 69-4303. Rules for determination of tuberculosis—adoption by state board of health.
- 69-4304. Functions, powers and duties of state department.
- 69-4305. Application to require person to submit to examination for tuberculosis or be treated in hospital.
- 69-4306. Application to require examination—necessary allegations.
- 69-4307. Application to require examination—procedure for hearing.
- 69-4308. Findings of court—orders.
- 69-4309. Commitment to hospital on noncompliance with order for examination for tuberculosis.
- 69-4310. Order of commitment—warrant for transportation.
- 69-4311. Confinement in hospital—submission to treatment.

- 69-4312. Release from commitment—procedure to obtain.
- 69-4313. Release from hospital—notice of date.
- 69-4314. Transfer of person to another hospital—notice.
- 69-4315. Court costs, expenses and fees—payment.
- 69-4316. Transportation expenses—payment by county.
- 69-4317. Facilities for diagnosis and treatment of tuberculosis.

69-4301. Public policy of the state. It is the public policy of the state to:

- (1) protect persons from the danger of tuberculosis in a communicable state;
- (2) provide and maintain a comprehensive program for the prevention, abatement, and adequate control working toward eradication of the disease;
- (3) co-operate with other state agencies and the federal government in carrying out these objectives.

History: En. Sec. 24, Ch. 197, L. 1967.

69-4302. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Local board" means a city, county, city-county or district board of health.

(2) "Tuberculosis" means a disease caused by the tubercle bacillus characterized by the production of tuberculous lesions.

History: En. Sec. 25, Ch. 197, L. 1967.

69-4303. Rules for determination of tuberculosis—adoption by state board of health. The state board of health shall adopt rules for the determination of tuberculosis in a communicable state.

History: En. Sec. 26, Ch. 197, L. 1967.

69-4304. Functions, powers and duties of state department. (1) Under policy guidance of the state board, the state department of health shall;

(a) accept, spend, and distribute federal funds available for tuberculosis control;

(b) collect and study data on the incidence of tuberculosis.

(2) Under policy guidance of the state board, the department may, if appropriate, contract with federal agencies or other state agencies for receipt and expenditure of federal funds.

History: En. Sec. 27, Ch. 197, L. 1967.

69-4305. Application to require person to submit to examination for tuberculosis or be treated in hospital. (1) If a person is reasonably suspected to have, or to have been exposed to, communicable tuberculosis, upon request of:

(a) a physician legally authorized to practice medicine in the state; or

(b) the department; or

(c) a local health officer; the department or a local board may apply for an order from the district court.

(2) The application shall request that the person be ordered to:

(a) submit to an examination for tuberculosis; or

(b) enter, or return to, a hospital for treatment if the person is a menace to public health.

History: En. Sec. 28, Ch. 197, L. 1967.

69-4306. Application to require examination—necessary allegations.

(1) The application for an order provided for in section 28 [69-4305] of this act shall allege that the person:

(a) is suspected of having tuberculosis in a communicable state or has been exposed to communicable tuberculosis; is a menace to public health and has refused to be examined for tuberculosis as required by rules adopted by the state board; or

(b) is suffering from tuberculosis in a communicable state; is a menace to public health; has refused to enter, or has left, a hospital against the advice of a physician or health officer.

(2) The application shall state the names of witnesses by which facts alleged may be proved. At least one (1) witness shall be a physician.

History: En. Sec. 29, Ch. 197, L. 1967.

69-4307. Application to require examination—procedure for hearing.

The procedure for a hearing on the application is:

(1) a summons stating the time and place of the hearing and a copy of the application is personally served on the person;

(2) the summons, with endorsement of the time of service, is filed with the district court prior to the hearing;

(3) not fewer than three (3) nor more than seven (7) days after service of the summons, a hearing is held in the district court;

(4) the court examines witnesses in attendance or others it wishes to call.

History: En. Sec. 30, Ch. 197, L. 1967.

69-4308. Findings of court—orders. Following the hearing, the court shall find that the allegations of the application are:

(1) true and order the person committed to a hospital; or

(2) true and order the person to submit to an examination for tuberculosis; or

(3) not true and order the person discharged.

History: En. Sec. 31, Ch. 197, L. 1967.

69-4309. Commitment to hospital on noncompliance with order for examination for tuberculosis. If a person fails to comply with an order to submit to an examination for tuberculosis within the time set, the court shall order him committed to a hospital.

History: En. Sec. 32, Ch. 197, L. 1967.

69-4310. Order of commitment—warrant for transportation. The court shall send certified copies of an order of commitment to the hospital and

the department or local board of health, and issue a warrant directed to the sheriff to transport the person to the designated hospital.

History: En. Sec. 33, Ch. 197, L. 1967.

69-4311. Confinement in hospital—submission to treatment. A person committed under section 31 or section 32 [69-4308 or 69-4309] of this act shall remain at the hospital until discharged, but he is not required to submit to medical or surgical treatment without written consent. If the person is incompetent, consent by his next of kin or guardian is required. If a person is a minor, consent by his parent or guardian is required. The person in charge of the hospital may use reasonable means to insure that the person committed remains at the hospital.

History: En. Sec. 34, Ch. 197, L. 1967.

69-4312. Release from commitment—procedure to obtain. (1) A person committed under section 31 [69-4308] or section 32 [69-4309] of this act may apply for a release. The procedure for the request and a hearing is:

(a) not fewer than one hundred eighty (180) days after commitment, the person applies to the court that ordered commitment requesting release;

(b) not fewer than three (3) nor more than seven (7) days after receipt of the request, the court holds a hearing.

(2) Following the hearing, the court:

(a) orders his discharge if it finds he no longer has tuberculosis in a communicable state; or

(b) dismisses the request if it finds he still has tuberculosis in a communicable state.

History: En. Sec. 35, Ch. 197, L. 1967.

69-4313. Release from hospital—notice of date. If the person in charge of the hospital and the department or local board that requested commitment concur that a person is no longer a menace to public health, the person shall be released from the hospital. The person in charge of the hospital shall file a notice of date of release with the court that ordered commitment.

History: En. Sec. 36, Ch. 197, L. 1967.

69-4314. Transfer of person to another hospital—notice. If it is in his best interest, a person may be transferred from the hospital to which he was committed to another hospital approved by the department. The person in charge of the hospital to which the person was committed shall notify the court that ordered commitment, and the department or local board that requested commitment, of the transfer.

History: En. Sec. 37, Ch. 197, L. 1967.

69-4315. Court costs, expenses and fees—payment. Court costs, expenses and all fees shall be paid by the treasurer of the county from which a person is committed. Expenses and fees shall be paid as follows:

(1) to sheriffs and their deputies the same fees allowed for similar services in district court;

- (2) to physicians, not to exceed two (2), fees as set by the court;
- (3) to witnesses the same fees and mileage provided for attendance in district court;
- (4) to persons other than the sheriff or his deputies who transport a person to or from a hospital, witness fees and expenses as verified by the court.

History: En. Sec. 38, Ch. 197, L. 1967.

69-4316. Transportation expenses—payment by county. Expenses of transporting a person to a hospital for commitment shall be paid from the general fund of the county from which the person is committed. The charge for care, treatment, and maintenance at the state pulmonary disease hospital shall be at the rate fixed by law.

History: En. Sec. 39, Ch. 197, L. 1967.

69-4317. Facilities for diagnosis and treatment of tuberculosis. The state pulmonary disease hospital shall maintain facilities to carry out provisions of this chapter.

History: En. Sec. 40, Ch. 197, L. 1967.

CHAPTER 44—VITAL STATISTICS

Section 69-4401. Definitions.

- 69-4402. Statewide system of vital statistics established by state board of health.
- 69-4403. Functions, powers and duties of state department of health.
- 69-4404. Disclosure of data in vital statistics records—inspection of records with the permission of the state registrar.
- 69-4405. Disclosure of information to governmental agencies.
- 69-4406. Certified copy of certificate—effect of.
- 69-4407. Certified copy of certificate—fee.
- 69-4408. Disposition of fees from certified copies.
- 69-4409. Local registrars—appointment—supervision.
- 69-4410. Local registrars—deputies.
- 69-4411. Certificates—information required—disposition of copies.
- 69-4412. Certificates—prima facie evidence.
- 69-4413. Births—compulsory registration.
- 69-4414. Unattended birth—certificate prepared and filed by local registrar.
- 69-4415. Custodian of child of unknown parents—report filed with local registrar constitutes birth certificate.
- 69-4416. Birth certificate—delayed filing—proof required—amendment.
- 69-4417. Birth certificate—delayed filing—summary statement of evidence.
- 69-4418. Date and place of birth—judicial procedure to establish where birth certificate cannot be obtained.
- 69-4419. Delayed certificate of birth—probative value.
- 69-4420. Substitute birth certificate—procedure for issuance.
- 69-4421. Substitute birth certificate—procedure for recording.
- 69-4422. Illegitimate birth—permissible disclosure.
- 69-4423. Proof of legitimation—new birth certificate.
- 69-4424. Death certificate—time of filing.
- 69-4425. Death certificate—preparation and filing.
- 69-4426. Death without medical attendance—certificate—investigation.
- 69-4427. Delay in determining cause of death—permit for disposition of body.
- 69-4428. Dead body—disposition or removal—permit required.
- 69-4429. Body brought into state for burial or other disposition—record of permit.
- 69-4430. Institutions caring for persons—reports as to inmates or patients.
- 69-4431. Local registrars—fees.
- 69-4432. Marriage certificates—reports as to filing—recording fee.

- 69-4433. Registration of divorces, annulments and adoptions—certificates by clerks of courts.
- 69-4434. Decree of divorce or annulment of marriage—report by clerk of court—information supplied by parties to the action or their attorneys.
- 69-4435. Duty to furnish information.
- 69-4436. False statements or information contained in or mutilation of reports, records, or certificates relating to vital statistics—penalty.
- 69-4437. Handling and disposing of dead body without permit—refusal to give information—neglect or refusal to perform duties imposed by vital statistics law—penalty.

69-4401. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Vital statistics" includes the registration, preparation, transcription, collection, compilation and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status and incidental supporting data.

(2) "Live birth" means the birth of a child who shows evidence of life after being entirely outside the mother.

(3) "Fetal death" means a birth after twenty (20) weeks of gestation which is not a live birth.

(4) "Dead body" means a lifeless human body or parts of a body from which it reasonably may be concluded that death occurred recently.

(5) "Person in charge of interment" means any person who places or causes to be placed, a dead body or the ashes after cremation, in a grave, vault, urn or other receptacle, or otherwise disposes of the body.

(6) "Physician" means a person legally authorized to practice medicine in this state.

(7) "State registrar" means the person designated by the executive officer of the department of health to have primary responsibility for vital statistics.

(8) "Local registrar" means a person appointed by the state registrar to act as his agent in administering this chapter within the area set forth in the letter of appointment.

History: En. Sec. 41, Ch. 197, L. 1967.

69-4402. Statewide system of vital statistics established by state board of health. The state board of health shall establish a statewide system of vital statistics and adopt rules for gathering, recording, using, and preserving vital statistics.

History: En. Sec. 42, Ch. 197, L. 1967.

69-4403. Functions, powers and duties of state department of health. The state department of health shall:

(1) divide the state into registration districts and change districts as necessary;

(2) gather, record, use, and preserve vital statistics;

(3) enforce rules adopted by the state board for gathering, recording, using and preserving vital statistics;

(4) give instructions and prescribe forms for gathering, recording, preserving, and using vital statistics.

History: En. Sec. 43, Ch. 197, L. 1967.

69-4404. Disclosure of data in vital statistics records—inspection of records with the permission of the state registrar. It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law and approved by the state board. The state registrar shall not permit inspection of the records or issue copies of any certificate unless he is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights. His decision is subject to review by the state board or a court.

History: En. Sec. 44, Ch. 197, L. 1967.

69-4405. Disclosure of information to governmental agencies. The state board may direct the state registrar to disclose information from his records to federal, state, county, or municipal agencies for use only as prescribed by the state board. If no identification of individuals is made, the state board may permit the use of data contained in vital statistics records for research purposes.

History: En. Sec. 45, Ch. 197, L. 1967.

69-4406. Certified copy of certificate—effect of. Subject to the limitations of sections 44, 45, 57, 59, and 62 [69-4404, 69-4405, 69-4417, 69-4419, and 69-4422] of this act, the state registrar shall furnish to any applicant a certified copy of a certificate, or part of it, upon request which shall be considered the same as the original.

History: En. Sec. 46, Ch. 197, L. 1967.

69-4407. Certified copy of certificate—fee. The state board shall prescribe a fee of not less than two dollars (\$2) for a certified copy of certificates, or search of files. The state board may provide transcripts to the federal agency responsible for vital statistics if it is reimbursed for costs.

History: En. Sec. 47, Ch. 197, L. 1967.

69-4408. Disposition of fees from certified copies. Fees received for a certified copy of a certificate or a search of files shall be deposited in the state general fund.

History: En. Sec. 48, Ch. 197, L. 1967.

69-4409. Local registrars—appointment—supervision. The state registrar shall:

- (1) with approval of the state board, appoint local registrars;
- (2) supervise local registrars and other persons required to comply with this act.

History: En. Sec. 49, Ch. 197, L. 1967.

69-4410. Local registrars—deputies. With approval of the state registrar, local registrars may appoint deputies. Local registrars and deputies shall immediately report violations of this act or rules of the state board to the state registrar.

History: En. Sec. 50, Ch. 197, L. 1967.

69-4411. Certificates—information required—disposition of copies. (1) All certificates shall include information required by the state board.

(2) Local registrars shall forward original certificates to the state registrar, file a duplicate copy with the county clerk and recorder, and retain a triplicate copy.

(3) Local registrars shall not issue certified copies of certificates.

History: En. Sec. 51, Ch. 197, L. 1967.

69-4412. Certificates—prima facie evidence. Certificates filed within six (6) months after the time prescribed by the state board shall be prima facie evidence of the facts stated in the certificates. Data pertaining to the father of a child are prima facie evidence only if the alleged father is the husband of the mother. If the alleged father is not the husband of the mother, data pertaining to the alleged father are not evidence in any proceedings adverse to his interests, his heirs, next of kin, devisees, legatees, or other successors in interest.

History: En. Sec. 52, Ch. 197, L. 1967.

69-4413. Births—compulsory registration. Within the time prescribed by the state board, a birth certificate shall be filed with the local registrar of the district in which the birth occurred by:

(1) the physician, midwife, or other legally authorized person if the birth is attended;

(2) one of the parents if the birth is unattended.

History: En. Sec. 53, Ch. 197, L. 1967.

69-4414. Unattended birth—certificate prepared and filed by local registrar. (1) If a birth is unattended and neither parent is able to prepare a birth certificate, the local registrar shall:

(a) secure information from any person having knowledge of the birth;

(b) prepare and file a birth certificate;

(c) within the time prescribed by the state board, file a supplementary report furnishing information omitted from the original birth certificate if additional information is received.

(2) Birth certificates completed by a supplementary report shall not be considered "delayed" or "altered."

History: En. Sec. 54, Ch. 197, L. 1967.

69-4415. Custodian of child of unknown parents—report filed with local registrar constitutes birth certificate. (1) A person who assumes custody of a child of unknown parentage shall immediately file with the local registrar a written report which shall constitute a birth certificate. The report shall contain:

(a) the date and place of finding or assumption of custody;

(b) sex, color or race, and approximate age of the child;

(c) name and address of the person or institution with whom the child has been placed for care;

(d) name given to the child by the finder or person who assumes custody.

(2) The place where the child was found or custody assumed shall be the place of birth. The date of birth shall be determined by approxima-

tion. If the child is identified and a regular birth certificate is found or obtained, the report shall be sealed and may be opened only by court order.

History: En. Sec. 55, Ch. 197, L. 1967.

69-4416. Birth certificate—delayed filing—proof required—amendment. After the time prescribed by the state board, a person born in this state may file a birth certificate upon submitting proof as required by the state board or by any court. A person may amend a birth, death, or fetal death certificate upon submitting proof as required by the state board.

History: En. Sec. 56, Ch. 197, L. 1967.

69-4417. Birth certificate—delayed filing—summary statement of evidence. If birth certificates are accepted six (6) months or more after the time prescribed for filing or are altered by the state registrar after filing, the certificate shall show the date of the delayed filing or alteration and the mark "delayed" or "altered." A summary statement of the evidence in support of the delayed filing or alteration shall be endorsed on the certificate.

History: En. Sec. 57, Ch. 197, L. 1967.

69-4418. Date and place of birth—judicial procedure to establish where birth certificate cannot be obtained. If a person born in this state cannot obtain a birth certificate from the state registrar, the judicial procedure to establish date and place of birth is:

(1) the person petitions the district court for an order establishing a public record of his birth alleging the facts which he claims entitles him to the birth certificate;

(2) if the court is satisfied of the truth of the allegations in the petition, it makes an order reciting the facts, determining the time and place of birth, names of parents, and other relevant facts;

(3) the court order or a certified copy is recorded with the county clerk and recorder and with the state registrar;

(4) from the court order, the state registrar makes a transcript of the important facts and issues a delayed birth certificate.

History: En. Sec. 58, Ch. 197, L. 1967.

69-4419. Delayed certificate of birth—probative value. The probative value of a "delayed" or "altered" certificate of birth is determined by the judicial or administrative body before whom the certificate is offered as evidence.

History: En. Sec. 59, Ch. 197, L. 1967.

69-4420. Substitute birth certificate—procedure for issuance. The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is:

(1) before the sixteenth day of the month following the order of adoption the clerk of the district court shall forward a certified copy of the final order of adoption to the state registrar;

(2) the state registrar shall prepare a substitute certificate containing;

- (a) the new name of the adopted person,
- (b) the true date and place of birth and sex of the adopted person,
- (c) statistical facts concerning the adoptive parents in place of the natural parents,
- (d) the words "state registrar" substituted for the words "attendant's own signature,"
- (e) dates of recording as shown on the original birth certificate.

History: En. Sec. 60, Ch. 197, L. 1967.

69-4421. Substitute birth certificate—procedure for recording. (1) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is:

- (a) the state registrar shall send copies of the substitute certificate to the local registrar and to the county clerk and recorder;
 - (b) the local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in their files and forward copies of the original birth record to the state registrar;
 - (c) the state registrar shall seal original birth records and open them only upon demand of the adopted person if of legal age, or upon order of a court.
- (2) Upon receipt of a certified copy of a court order annulling an adoption, the state registrar shall restore the original certificate to its place in his files and notify the local registrar and county clerk and recorder.

History: En. Sec. 61, Ch. 197, L. 1967.

69-4422. Illegitimate birth—permissible disclosure. Disclosure of illegitimacy of birth, or information from which illegitimacy can be ascertained, may be made only upon order of a court to determine personal or property rights. The information can be used only for that purpose.

History: En. Sec. 62, Ch. 197, L. 1967.

69-4423. Proof of legitimation—new birth certificate. Upon receipt of proof of legitimation, the state registrar shall prepare a new birth certificate in the new name of the person legitimated. Evidence upon which the new certificate is based and the original birth certificate shall be sealed and may be opened only upon court order. In case of legitimation, the state registrar shall substitute records in the way provided in section 61 [69-4421] of this act for records of adoption.

History: En. Sec. 63, Ch. 197, L. 1967.

69-4424. Death certificate—time of filing. (1) A death or fetal death certificate shall be filed with the local registrar prior to interment or other disposition of a dead body. If the place of death is known, the certificate shall be filed within three (3) days after the occurrence is known. If the place of death or fetal death is unknown, the certificate shall be filed within twenty-four (24) hours after the occurrence is known.

(2) If a state resident dies outside the county of his residence, the clerk and recorder shall send a certified copy of the death certificate to

the clerk and recorder of the deceased's county of residence. The copy shall be considered the same as the original.

History: En. Sec. 64, Ch. 197, L. 1967.

69-4425. Death certificate—preparation and filing. A person in charge of interment shall:

(1) obtain personal data required by the state board from persons best qualified to supply the data and enter it on the death or fetal death certificate;

(2) present the death certificate to the physician last in attendance upon the deceased or the coroner having jurisdiction who shall certify the cause of death according to his best knowledge and belief; or

(3) present the fetal death certificate to the physician, midwife, or other person in attendance, who shall certify the fetal death and supply any pertinent additional medical data;

(4) notify the local registrar if the death or fetal death occurred without attendance or if the physician last in attendance failed to sign the death certificate;

(5) file the death or fetal death certificate with the local registrar within three (3) days after the occurrence.

History: En. Sec. 65, Ch. 197, L. 1967.

69-4426. Death without medical attendance—certificate—investigation. If the death or fetal death occurred without medical attendance or the physician last in attendance failed to sign the death certificate, the local registrar may complete the certificate on the basis of information received from persons having knowledge of the facts. If it appears the death or fetal death resulted from other than natural causes, the local registrar shall notify the coroner for investigation and certification.

History: En. Sec. 66, Ch. 197, L. 1967.

69-4427. Delay in determining cause of death—permit for disposition of body. If the cause of death or fetal death cannot be determined within three (3) days after the occurrence, the attending physician or coroner shall give the local registrar written notice of the reason for delay so that a permit may be issued for disposition of the body.

History: En. Sec. 67, Ch. 197, L. 1967.

69-4428. Dead body—disposition or removal—permit required. No dead body shall be disposed of or removed from a registration district until a permit for disposition or removal has been issued by the local registrar. No permit shall be issued until a death certificate, fetal death certificate, or notice of delay as required in section 67 [69-4427] of this act has been filed with the local registrar.

History: En. Sec. 68, Ch. 197, L. 1967.

69-4429. Body brought into state for burial or other disposition—record of permit. If a body is brought into the state for burial or other disposition accompanied by a permit, the local registrar shall endorse the permit and keep a record of it.

History: En. Sec. 69, Ch. 197, L. 1967.

69-4430. Institutions caring for persons—reports as to inmates or patients. The person in charge of any institution or facility for the care of persons shall record and report all data required by this chapter relating to inmates or patients of the institution or facility.

History: En. Sec. 70, Ch. 197, L. 1967.

69-4431. Local registrars—fees. The state board may specify by regulation a fee to be paid each local registrar for each complete birth, death or fetal death certificate forwarded by the local registrar to the state registrar, or a monthly report stating the local registrar did not file certificates. The state registrar shall annually certify to the county treasurer the number of births, fetal deaths, and deaths, or monthly reports received from his county with the names of the local registrars and the amount due each. The treasurer shall pay each local registrar out of the county general fund.

History: En. Sec. 71, Ch. 197, L. 1967.

69-4432. Marriage certificates—reports as to filing—recording fee. Before the sixteenth day of each month, each clerk of a district court shall report marriage certificates filed with him during the preceding calendar month to the state registrar. Reports shall be on forms and contain information prescribed by the state registrar. The applicant for a marriage license shall pay a recording fee of twenty-five cents (\$.25) to the officer authorized to issue the marriage license.

History: En. Sec. 72, Ch. 197, L. 1967.

69-4433. Registration of divorces, annulments and adoptions—certificates by clerks of courts. Before the sixteenth day of each month, the clerk of court shall prepare and forward to the state registrar a certificate for each decree of divorce, adoption, annulment of marriage, or annulment of adoption that became final during the preceding calendar month. Certificates shall be on forms prescribed by the state registrar.

History: En. Sec. 73, Ch. 197, L. 1967.

69-4434. Decree of divorce or annulment of marriage—report by clerk of court—information supplied by parties to the action or their attorneys. (1) At the same time a decree of divorce or annulment of marriage is filed, the clerk of court shall prepare a report to the state registrar on the form prescribed by the state registrar. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report shall include:

(a) name, age, birthplace, residence, race or color, and occupation of each party;

(b) number, date, and place of any previous marriage of either party;

(c) number of children under eighteen (18) years of age in custody of either party and residing with him;

(d) grounds for the action;

(e) the number of the cause of action;

(f) the county and judicial district where the action is filed;

(g) the date of judgment and the party which was granted it.

History: En. Sec. 74, Ch. 197, L. 1967.

69-4435. Duty to furnish information. Any person having knowledge of the fact shall furnish information he possesses about a birth, death, fetal death, marriage or divorce upon demand of the state registrar.

History: En. Sec. 75, Ch. 197, L. 1967.

69-4436. False statements or information contained in or mutilation of reports, records, or certificates relating to vital statistics—penalty. A person shall be fined not more than one thousand dollars (\$1,000), imprisoned not more than one (1) year, or both, if:

(1) he willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law, or in an application for an amendment thereof, or willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment;

(2) without lawful authority and with the intent to deceive, he makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(3) he willfully and knowingly uses or attempts to use, or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(4) with the intention to deceive, he willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;

(5) he willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

History: En. Sec. 76, Ch. 197, L. 1967.

69-4437. Handling and disposing of dead body without permit—refusal to give information—neglect or refusal to perform duties imposed by vital statistics law—penalty. A person shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100), imprisoned for not more than thirty (30) days, or both, if:

(1) he knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(2) he refuses to provide information required by law;

(3) he willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon him by law.

History: En. Sec. 77, Ch. 197, L. 1967.

CHAPTER 45—LOCAL BOARDS OF HEALTH

- Section 69-4501. Definitions.
 69-4502. General supervision by state department of health.
 69-4503. Federal funds—acceptance—allocation.
 69-4504. County boards of health—composition.
 69-4505. City boards of health—first and second class cities—appointment of members.
 69-4506. City-county boards of health—appointment of members.
 69-4507. District boards of health—appointment of members.

- 69-4508. Financing of local boards of health—appropriations—tax levies.
- 69-4509. Functions, powers and duties of local boards of health.
- 69-4510. Local health officers—powers and duties.
- 69-4511. Local health officers—appointment.
- 69-4512. Visiting nurses.
- 69-4513. Health officers—assistance of peace officers in enforcing law.
- 69-4514. Cases of communicable disease—reports by practitioners of the healing arts.
- 69-4515. Smallpox vaccination.
- 69-4516. Diseased prisoners—removal from jail to hospital by local health officer.
- 69-4517. Obstructing local health officer in the performance of his duties unlawful.
- 69-4518. Dead animals—unlawful disposition.
- 69-4519. Penalty.

69-4501. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Local board" means a county, city, city-county, or district board of health.

(2) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(3) "Physician" means a physician legally authorized to practice medicine in this state.

History: En. Sec. 78, Ch. 197, L. 1967.

69-4502. General supervision by state department of health. With approval of the state board of health, the state department of health has general supervision over local boards.

History: En. Sec. 79, Ch. 197, L. 1967.

69-4503. Federal funds—acceptance—allocation. With approval of the state board, the executive officer of the state department of health may accept funds for public health from an agency of the federal government, or from any other agency or person, and allocate funds to local boards.

History: En. Sec. 80, Ch. 197, L. 1967.

69-4504. County boards of health—composition. There is a county board of health in each county consisting of:

(1) the county commissioners, and two (2) members appointed by the county commissioners and serve at their pleasure; or

(2) five (5) persons who are appointed by the county commissioners and serve at their pleasure. Terms of appointed members shall be staggered and shall be for three (3) years each. County commissioners shall establish the staggered order of terms and all regulations necessary to establish and maintain the board.

History: En. Sec. 81, Ch. 197, L. 1967; amd. Sec. 1, Ch. 216, L. 1969.

Amendments

The 1969 amendment, in subdivision (1), inserted "and two (2) members * * *

at their pleasure" after "county commissioners"; and, in subdivision (2), substituted "five (5)" for "three (3)" before "persons" and added the last two sentences.

69-4505. City boards of health—first and second class cities—appointment of members. There is a city board of health in each first

and second class city consisting of five (5) persons who are appointed by the governing body of the city and serve at their pleasure. Terms of appointed members shall be staggered and shall be for three (3) years each. The governing body of the city shall establish the staggered order of terms and all regulations necessary to establish and maintain the board.

History: En. Sec. 82, Ch. 197, L. 1967;
amd. Sec. 2, Ch. 216, L. 1969.

Amendments

The 1969 amendment substituted "five (5)" for "three (3)" before "persons" in the first sentence and added the last two sentences.

69-4506. City-county boards of health—appointment of members. By mutual agreement between the county commissioners and the governing body of the city, the county and a first or second class city, or cities, may form a city-county board of health. A city-county board of health consists of:

(1) one (1) person appointed by the county commissioners who serves at their pleasure;

(2) one (1) person appointed by the governing body of each city that participates in the city-county board who serves at the pleasure of the appointing governing body;

(3) additional members appointed by the county commissioners and governing body, or bodies, of the city or cities participating in the city-county board as mutually agreed upon, who serve at the pleasure of the appointing commissioners or governing body. The board shall be composed of at least five (5) persons. Terms of appointed members shall be staggered and shall be for three (3) years each. By mutual agreement between the county commissioners and the governing body of the city, they shall establish the staggered order of terms and all regulations necessary to establish and maintain the board.

History: En. Sec. 83, Ch. 197, L. 1967;
amd. Sec. 3, Ch. 216, L. 1969.

Amendments

The 1969 amendment added the last three sentences in subdivision (3).

69-4507. District boards of health—appointment of members. By mutual agreement, two (2) or more adjacent counties may unite to create a district board of health. First and second class cities located in those counties may elect to be included in the district. A district board of health consists of:

(1) one (1) person appointed by the county commissioners of each county in the district who serves at the pleasure of the appointing commissioners;

(2) one (1) person appointed by the governing body of each city that elects to be included in the district, who serves at the pleasure of the appointing governing body;

(3) additional members appointed by the county commissioners of each county that participates in the district board as mutually agreed upon, who serve at the pleasure of the appointing commissioners.

History: En. Sec. 84, Ch. 197, L. 1967.

69-4508. Financing of local boards of health—appropriations—tax levies. (1) Local boards are financed by general fund appropriations, state and federal funds available, and contributions from school boards and other official and nonofficial agencies.

(2) Appropriations are made as follows:

(a) County boards are financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under chapter 19, Title 16, R. C. M. 1947.

(b) City boards are financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under chapter 14, Title 11, R. C. M. 1947.

(c) If a city-county board is created, the county commissioners and governing body of the city, or cities, shall mutually agree upon the division of expenses. The county part of total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under chapter 19, Title 16, R. C. M. 1947. The city, or cities, part of total costs is financed by an appropriation from the general fund of the city, or cities, participating in the city-county board after approval of a budget in the way provided for other city offices and departments under chapter 14, Title 11, R. C. M. 1947. All moneys shall be deposited with the county treasurer who shall disburse them as county funds.

(d) District boards are financed by appropriations from the general funds of the counties in the district in proportion to the population in each county. First and second class cities which elect to be included in the district contribute to the county in which they are located in the way provided for city-county boards under subsection (2) (c) of this section. All funds shall be deposited with the county treasurer of one (1) of the counties as agreed upon by the commissioners of the counties in the district. The county treasurer shall disburse the funds as county funds.

(3) School boards and other official and nonofficial agencies may contribute funds to a local board.

(4) If the general fund of a city or county is not sufficient to meet the approved budget, a levy of not more than one (1) mill may be made on the taxable valuation of all property in the city or county in addition to all other levies authorized by law.

History: En. Sec. 85, Ch. 197, L. 1967.

69-4509. Functions, powers and duties of local boards of health. (1) Local boards shall:

- (a) appoint a local health officer who is a physician and fix his salary;
- (b) elect a chairman and other necessary officers;
- (c) employ necessary qualified staff;
- (d) adopt bylaws to govern meetings;
- (e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth which cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things which are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places which are infected with communicable diseases;

(e) require and provide means for disinfecting places which are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all, or a part of, local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety;

(j) adopt necessary regulations and fees for the control and disposal of sewage from private and public buildings not currently connected to any municipal system. Fees shall be desposited with the county treasurer;

(k) adopt rules, which do not conflict with rules adopted by the state board:

(i) for the control of communicable diseases,

(ii) for the removal of filth which might cause disease or adversely affect public health,

(iii) on sanitation in public buildings which affects public health,

(iv) for heating, ventilation, water supply and waste disposal in public accommodations which might endanger human lives.

History: En. Sec. 86, Ch. 197, L. 1967; **Amendments**
amd. Sec. 4, Ch. 216, L. 1969.

The 1969 amendment, in subdivision (2) (i), added "and safety"; inserted present subdivision (2) (j); and designated former subdivision (2) (j) as (2) (k).

69-4510. Local health officers—powers and duties. (1) Local health officers, or their authorized representatives, shall:

(a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of all filth which might cause disease;

(c) with written approval of the executive officer, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the executive officer each week;

(e) before the first day of January, April, July and October, give a report to the local board of sanitary conditions in the county, city, city-

county, or district together with a detailed account of his activities on forms, and containing information, required by the department;

(f) before the tenth day after the report is given to the local board, send a copy of the report required by subsection (1) (e) of this section to the department;

(g) as prescribed by rules adopted by the state board, establish and maintain quarantines;

(h) as prescribed by rules adopted by the state board, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the state health department of his appointment and any changes in membership of the local board;

(j) file a complaint with the appropriate court if provisions of this chapter or rules adopted by the local or state board under the provisions of this chapter are violated.

(2) With approval of the executive officer, local health officers may forbid persons to assemble in any place if the assembly endangers public health.

(3) Local health officers may be placed in charge of communicable disease hospitals, but local health officers are not required to act as physician to the indigent.

History: En. Sec. 87, Ch. 197, L. 1967.

69-4511. Local health officers—appointment. If the county commissioners, or governing body of a first or second class city, do not appoint a health officer, the state board may appoint a health officer thirty (30) days after notification in writing has been given to the county commissioners or governing body of the city. A health officer appointed by the state board has the same authority as a health officer appointed by a local board.

History: En. Sec. 88, Ch. 197, L. 1967.

69-4512. Visiting nurses. (1) A local board may employ a qualified nurse for nursing services to persons under a physician's care who are confined to their homes. Before nursing services are provided, a physician must:

- (a) determine that the person needs the services of a visiting nurse;
- (b) direct the nurse to visit the person;
- (c) specify the type and duration of services to be performed by the nurse.

(2) Persons shall pay for the services at rates set by the local board. Local boards, on behalf of persons receiving services, may accept payment from persons or public agencies either directly from, or by contract with, the person or agency. All payments received shall be deposited in a special county or city fund and used to defray expenses of providing the service.

History: En. Sec. 89, Ch. 197, L. 1967.

69-4513. Health officers—assistance of peace officers in enforcing law. A state or local health officer may request a sheriff, constable, or other public officer to assist him in carrying out the provisions of this chapter. If the officer does not render the service, he is guilty of a misdemeanor and may be removed from office.

History: En. Sec. 90, Ch. 197, L. 1967.

69-4514. Cases of communicable disease—reports by practitioners of the healing arts. If a physician or other practitioner of the healing arts examines or treats a person whom he believes has a communicable disease, or a disease declared reportable by the department, he shall immediately report the case to the local health officer. The report shall be in the form, and contain information, prescribed by the department.

History: En. Sec. 91, Ch. 197, L. 1967.

69-4515. Smallpox vaccination. If there is a reasonable belief that smallpox exists or may exist, the department may require all persons frequenting any schoolhouse within the infected or threatened district to be vaccinated, or to present evidence of successful vaccination with cowpox. Unless a person presents evidence of vaccination, it is unlawful for him to enter any schoolhouse in the district.

History: En. Sec. 92, Ch. 197, L. 1967.

69-4516. Diseased prisoners—removal from jail to hospital by local health officer. (1) On written order of a local health officer, a diseased prisoner who is held in a jail and who is considered dangerous to the health of other prisoners, may be removed to a hospital or other place of safety. When the prisoner recovers from the disease, he shall be returned to the jail. If the prisoner was committed to jail by order of court, the order for removal and treatment shall be signed by the local health officer and filed with the court.

(2) A prisoner removed to a hospital or clinic for treatment shall not be considered to have committed an escape.

History: En. Sec. 93, Ch. 197, L. 1967.

69-4517. Obstructing local health officer in the performance of his duties unlawful. It is unlawful to:

(1) hinder a local health officer in the performance of his duties under this chapter; or

(2) remove or deface any placard or notice posted by the local health officer; or

(3) violate a quarantine regulation.

History: En. Sec. 94, Ch. 197, L. 1967.

69-4518. Dead animals—unlawful disposition. It is unlawful to:

(1) place all or any part of a dead animal in any lake, river, creek, pond, reservoir, road, street, alley, lot, or field; or

(2) place all or any part of a dead animal within one mile of the residence of any person unless the dead animal or part of a dead animal is burned or buried at least two (2) feet under ground; or

(3) being the owner, permit all or any part of a dead animal to remain in the places specified in subsections (1) and (2) of this section except as provided in subsection (2) of this section;

(4) every twenty-four (24) hours that a dead animal or part of a dead animal remains in the places specified in subsections (1) and (2) of this section except as provided in subsection (2) of this act is a separate violation.

History: En. Sec. 95, Ch. 197, L. 1967.

69-4519. Penalty. (1) If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the city or county.

(2) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, he shall be fined not less than ten dollars (\$10) nor more than fifty dollars (\$50).

(3) Except as provided in subsections (1) and (2) of this section, a person who violates the provisions of this chapter, or rules adopted by the state board under the provisions of this chapter, is guilty of a misdemeanor. On conviction, he shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500), imprisoned for not more than ninety (90) days, or both.

History: En. Sec. 96, Ch. 197, L. 1967.

CHAPTER 46—VENEREAL DISEASE

- Section 69-4601. Venereal diseases defined—dangerous to public health—exposing another to infection unlawful.
- 69-4602. Education campaigns by state department of health—co-operation with federal agencies—use of federal funds.
- 69-4603. Acceptance and disbursement of federal funds for control of venereal disease.
- 69-4604. Duty of physician to report cases of venereal disease.
- 69-4605. Examination and treatment of suspects—isolation or quarantine.
- 69-4606. Examination and treatment of prisoners.
- 69-4607. Duty of physician or other person to notify local health officer of suspected spread of infection.
- 69-4608. Prescribing of drugs or medicines for venereal disease limited to physicians.
- 69-4609. Certificates of freedom from disease.
- 69-4610. Information concerning infected persons—release.
- 69-4611. Serological test for syphilis.
- 69-4612. Blood samples from pregnant women to be tested for syphilis.
- 69-4613. Positive laboratory tests to be reported to state board of health.
- 69-4614. Report of birth to state whether blood test was made.
- 69-4615. Use of information derived from positive tests.
- 69-4616. Rules of state board of health—binding effect.
- 69-4617. Penalty for violations of chapter, regulations or orders.

69-4601. Venereal diseases defined—dangerous to public health—exposing another to infection unlawful. Syphilis, gonorrhea, chancroid, lympho-granuloma, venereum, and granuloma inguinale are venereal dis-

eases. Venereal diseases are contagious, infectious, communicable, and dangerous to public health. A person infected with a venereal disease shall not knowingly expose another person to infection.

History: En. Sec. 97, Ch. 197, L. 1967.

69-4602. Education campaigns by state department of health—cooperation with federal agencies—use of federal funds. Under policy guidance of the state board of health, the state department of health shall undertake to prevent, control and prescribe treatments for venereal diseases and may conduct education campaigns for this purpose. The department shall co-operate with federal agencies and may expend federal funds made available to the state for the prevention, control and treatment of venereal diseases.

History: En. Sec. 98, Ch. 197, L. 1967.

69-4603. Acceptance and disbursement of federal funds for control of venereal disease. With approval of the state board, the executive officer of the state department of health is authorized to accept federal funds available for the prevention, control and treatment of venereal diseases, deposit funds in the state treasury, and disburse the funds.

History: En. Sec. 99, Ch. 197, L. 1967.

69-4604. Duty of physician to report cases of venereal disease. A physician who diagnoses or treats a venereal disease shall make a record and report the case to the department in the way and on forms provided by the department.

History: En. Sec. 100, Ch. 197, L. 1967.

69-4605. Examination and treatment of suspects—isolation or quarantine. (1) If found necessary or desirable to protect public health, state and local health officers or their authorized deputies or agents shall:

(a) examine, or have examined, persons reasonably suspected of being infected with venereal disease;

(b) require persons infected to report for treatment to a reputable physician and continue treatment, which may be at public expense, until cured;

(c) isolate or quarantine persons who refuse examination or treatment;

(d) investigate sources of infection of venereal disease.

(2) No one but the state or local health officer may terminate the isolation or quarantine. Examinations may be made repeatedly as deemed advisable or desirable.

History: En. Sec. 101, Ch. 197, L. 1967.

69-4606. Examination and treatment of prisoners. Any person confined or imprisoned in any state, county, or municipal prison within the state may be examined for venereal disease. If infected, the person shall be treated by health authorities.

History: En. Sec. 102, Ch. 197, L. 1967.

69-4607. Duty of physician or other person to notify local health officer of suspected spread of infection. If a physician or other person knows or has reason to suspect that a person who has venereal disease

is conducting himself in a way which might expose another to infection, he shall immediately notify the local health officer of the name and address of the diseased person and the essential facts in the case.

History: En. Sec. 103, Ch. 197, L. 1967.

69-4608. Prescribing of drugs or medicines for venereal disease limited to physicians. It is unlawful to prescribe, sell or recommend any drugs, medicines, or other substances for the cure or alleviation of venereal disease except upon prescription signed by a physician legally authorized to practice medicine in this state.

History: En. Sec. 104, Ch. 197, L. 1967.

69-4609. Certificates of freedom from disease. No person shall issue a certificate of freedom from venereal disease. However, a physician or health officer may issue a statement of freedom from diseases in an infectious state only if it is written in such form or given under safeguards that will prevent its use in solicitation for sexual intercourse. These statements shall not be used for solicitation for immoral purposes.

History: En. Sec. 105, Ch. 197, L. 1967.

69-4610. Information concerning infected persons—release. Information concerning persons infected or reasonably suspected to be infected with venereal disease may only be released to:

- (1) personnel of the state department of health; or
- (2) a physician who has written consent of the person whose record is requested.

History: En. Sec. 106, Ch. 197, L. 1967.

69-4611. Serological test for syphilis. The department shall approve a standard serological test for syphilis. It shall also approve laboratories which may make such tests. On request the department shall make laboratory tests required by this chapter without charge. The department shall destroy the results of a test if an erroneous report is made.

History: En. Sec. 107, Ch. 197, L. 1967.

69-4612. Blood samples from pregnant women to be tested for syphilis. Blood samples shall be taken from pregnant women and submitted to an approved laboratory for a standard serological test for syphilis as follows:

- (1) any physician or other person authorized by law to practice obstetrics who attends a pregnant woman shall at the first professional visit take the blood sample and submit it to the laboratory.
- (2) a person permitted to attend pregnant women but not permitted to take blood samples shall have the sample taken by a person permitted to take blood samples and submitted to a laboratory. If a pregnant woman refuses to give a blood sample, the person in attendance is not guilty of violating provisions of this section.

History: En. Sec. 108, Ch. 197, L. 1967.

69-4613. Positive laboratory tests to be reported to state board of health. Immediately after a positive laboratory test for venereal diseases is made, it shall be reported to the department by the person responsible

for performing the tests. The department shall prescribe the form and way of reporting.

History: En. Sec. 109, Ch. 197, L. 1967.

69-4614 Report of birth to state whether blood test was made. A birth or fetal death certificate shall state whether a blood test for syphilis has been made on a specimen of blood taken from the mother. However, no birth or fetal death certificate may show the result of the test. The certificate shall state the approximate date when the specimen was taken. If no test was made, the reason shall be stated.

History: En. Sec. 110, Ch. 197, L. 1967.

69-4615. Use of information derived from positive tests. The department may use information derived from reports of positive tests for venereal diseases for follow-up procedures required by law or deemed necessary by the department for the protection of public health.

History: En. Sec. 111, Ch. 197, L. 1967.

69-4616. Rules of state board of health—binding effect. Rules adopted by the state board for carrying out the provisions of this chapter are binding on all persons and have the effect of law.

History: En. Sec. 112, Ch. 197, L. 1967.

69-4617. Penalty for violations of chapter, regulations or orders. A person who violates provisions of this chapter or rules adopted by the state board concerning venereal disease, or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor.

History: En. Sec. 113, Ch. 197, L. 1967.

CHAPTER 47—SHODDY CONTROL

Section 69-4701. "Mattress" defined.

69-4702. Label required.

69-4703. Prohibited acts—use of unfit material—use of secondhand material without sterilization—use of misleading terms.

69-4704. Rules and standards for mattress filling—adoption by state board of health.

69-4705. Inspections by health authorities.

69-4706. Condemnation of mattresses unlawfully made.

69-4707. Separate offenses.

69-4701. "Mattress" defined. As used in this chapter, unless the context clearly indicates otherwise, "mattress" means any quilted pad, comforter, mattress, mattress pad, hammock pad, bunk quilt, settee, couch, daybed, davenport, overstuffed chair, cushion or pillow filled with any soft material capable of use for sleeping or reclining purposes.

History: En. Sec. 114, Ch. 197, L. 1967.

69-4702. Label required. A person shall not manufacture or renovate for sale, consignment or rental a mattress unless it bears a label not smaller than six (6) square inches securely attached to the covering which states the name and address of the manufacturer or vendor, and type and per cent of various materials used in filling. If the mattress

contains secondhand material, or has been renovated or remade, the label shall contain the words "secondhand material." The labels shall be in the form, and contain information, as prescribed by the state board of health.

History: En. Sec. 115, Ch. 197, L. 1967.

69-4703. Prohibited acts—use of unfit material—use of secondhand material without sterilization—use of misleading terms. A person shall not:

(1) manufacture or renovate for sale, consignment or rental a mattress containing material designated as unfit for filling by rules adopted by the state board;

(2) manufacture or renovate for sale, consignment or rental a mattress which contains secondhand materials or materials designated shoddy by the state board unless the mattress has been fumigated or sterilized by a process approved by the state board;

(3) use in a description for any mattress a term or designation that is likely to mislead;

(4) remove, alter, or deface any label required by section 115 [69-4702] of this act.

History: En. Sec. 116, Ch. 197, L. 1967.

69-4704. Rules and standards for mattress filling—adoption by state board of health. The state board may adopt rules and standards for mattress fillings to protect public health.

History: En. Sec. 117, Ch. 197, L. 1967.

69-4705. Inspections by health authorities. Officers and employees of the state department of health, local health officials, or officials discharging similar duties may enter establishments where mattresses are manufactured, renovated or sold and examine the premises or records to determine whether statutes, or rules and standards adopted by the state board are being violated.

History: En. Sec. 118, Ch. 197, L. 1967.

69-4706. Condemnation of mattresses unlawfully made. The department may condemn and seize mattresses found in violation of this chapter or rules or standards adopted by the state board. Mattresses seized shall be inspected by the nearest police judge or justice of the peace together with any information obtained. The judge or justice shall dispose of the mattresses or destroy them in the way which will best satisfy the requirements of law.

History: En. Sec. 119, Ch. 197, L. 1967.

69-4707. Separate offenses. The unit for a separate and distinct offense in violation of this chapter is each mattress made, remade, renovated, sold, offered for sale, delivered, consigned, rented, or possessed with intent to sell, deliver, consign, or rent.

History: En. Sec. 120, Ch. 197, L. 1967.

CHAPTER 48—WATER POLLUTION

- Section 69-4801. Public policy of the state.
 69-4802. Definitions.
 69-4803. Classification of waters for industrial use.
 69-4804. Chapter inapplicable to drainage or seepage from artificial bodies of water privately owned—exception.
 69-4805. Administration of chapter—responsibility of state board of health.
 69-4806. Pollution unlawful—permits.
 69-4807. Permits, issuance—plans and specifications required—treatment works required for new or increased sources of sewage, industrial waste, or other waste—revocation of permit for violation.
 69-4808. Duties of the state department of health.
 69-4808.1. State board of health to administer state matching funds for construction of water pollution control facilities—limit on funds.
 69-4809. Powers and duties of state department of health.
 69-4810. State water pollution control council—creation—members, appointment and term of office.
 69-4811. State water pollution control council—vacancy in office, filling—compensation of members.
 69-4812. State water pollution control council—officers—meetings—quorum—designating of deputy by member.
 69-4813. Powers and duties of the council.
 69-4814. Hearings by council—notice.
 69-4815. Rehearing of order—procedure.
 69-4816. Appeal from decision at a rehearing—procedure.
 69-4817. Compliance with order required—extension of time.
 69-4818. Injunction to enforce order.
 69-4819. State officers to co-operate with state water pollution control council.

69-4801. Public policy of the state. (1) It is the public policy of this state to:

(a) conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses;

(b) provide a comprehensive program for the prevention, abatement, and control of water pollution.

(2) It is not necessary that wastes be treated to a purer condition than the natural condition of the receiving stream. However, municipal or industrial pollution upstream shall not be considered natural.

History: En. Sec. 121, Ch. 197, L. 1967.

69-4802. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry, or from the development of any natural resource together with any sewage that may be present;

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, tar, chemicals, and all other substances that may pollute state waters;

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes or other wastes creating a hazard to human health;

(5) "Pollution" means the alteration of any of the properties of state waters which is detrimental to their most beneficial use;

(6) "Sewerage system" means any device for collecting or conducting sewage, industrial wastes or other wastes to an ultimate disposal point;

(7) "Treatment works" means any works installed for treating or holding sewage, industrial wastes or other wastes;

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewerage systems and treatment works;

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground;

(10) "Person" means the state, any political subdivision of the state, institution, firm, corporation, partnership, or individual or other entity;

(11) "Council" means the state water pollution control council.

History: En. Sec. 122, Ch. 197, L. 1967.

69-4803. Classification of waters for industrial use. Waters shall be classified only for industrial use if primarily and continuously devoted to industrial waste use except for seasonable variations for a period of over thirty (30) years, and not used for human consumption in a single public supply system serving more than one hundred (100) persons.

History: En. Sec. 123, Ch. 197, L. 1967.

69-4804. Chapter inapplicable to drainage or seepage from artificial bodies of water privately owned—exception. This chapter does not apply to drainage or seepage from artificial, privately owned bodies of water unless drainage reaches flowing waters in a condition which would pollute the flowing waters.

History: En. Sec. 124, Ch. 197, L. 1967.

69-4805. Administration of chapter—responsibility of state board of health. Under council supervision, the state board of health has responsibility for administration of the provisions of this chapter. The state board may use personnel of the state department of health as necessary to administer the provisions of this chapter.

History: En. Sec. 125, Ch. 197, L. 1967.

69-4806. Pollution unlawful—permits. It is unlawful to:

(1) cause pollution as defined in section 122(5) [69-4802(5)] of this act to any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(2) carry on any of the following activities without a current permit from the department:

(a) operate a disposal system which discharges to the state waters;

(b) construct or modify a disposal system which discharges to the state waters;

(c) increase the volume or strength of sewage, industrial wastes, or other wastes in excess of the permissive discharges specified under any existing permit;

(d) construct or use any new outlet for the discharge of sewage, industrial wastes, or other wastes to the state waters.

History: En. Sec. 126, Ch. 197, L. 1967.

69-4807. Permits, issuance—plans and specifications required—treatment works required for new or increased sources of sewage, industrial waste, or other waste—revocation of permit for violation. The department may require plans and specifications to determine if a permit should be issued. Any person introducing a new source or increased source of sewage, industrial waste, or other wastes as defined in section 69-4802 (1), (2) and (3), R. C. M. 1947 to waters and tributaries of waters classified as A-open-D-1 or higher by the council shall be required to install and maintain the highest and best degree of treatment works necessary to maintain adequately said classification, as defined in section 69-4802 (7), R. C. M. 1947 prior to the issuance of a permit by the department. If a violation of a permit causes damage to a water use, the department may immediately order revocation of the permit without a hearing, and so notify the violating person in writing, by registered mail, return receipt requested, the revocation to be effective immediately upon receipt of such notice by such person.

History: En. Sec. 127, Ch. 197, L. 1967; Amendments
amd. Sec. 1, Ch. 277, L. 1969.

The 1969 amendment inserted the second sentence.

69-4808. Duties of the state board of health. (1) The state board shall advise, consult, and co-operate with other states, other state agencies and agencies of the federal government, affected groups, political subdivisions and industries, in the formulation of a comprehensive plan to control water pollution.

(2) The state board may:

(a) accept loans and grants from the federal government and from other sources to carry out the provisions of this chapter;

(b) modify council actions, but only as necessary to protect human health;

(c) through its authorized representatives, enter upon any private or public property at reasonable times to investigate conditions relating to pollution of state waters;

(d) issue, modify, or revoke orders for the abatement of pollution;

(e) issue, revoke, modify, or deny permits to persons for the collection and discharge of sewage and wastes under conditions prescribed by the state board and the council.

History: En. Sec. 128, Ch. 197, L. 1967.

69-4808.1. State board of health to administer state matching funds for construction of water pollution control facilities—limit on funds. The state board of health of the state of Montana hereinafter referred to as the state board of health, is hereby designated as the state agency which shall administer and control all funds to be appropriated by the state for the purpose of providing matching funds to local governments for the construction of water pollution control facilities. The state board

of health shall promulgate rules and regulations, and establish standards for the use of such matching funds, by local governments, in the planning and construction of local water pollution control facilities.

Any funds appropriated by this act shall be used only to provide an increase in the aid from the federal government not otherwise obtainable and in no case shall exceed twenty-five per cent (25%) of the total cost of the project as participated in by the federal water pollution control administration.

History: En. Sec. 1, Ch. 165, L. 1969.

struction of water pollution control facilities.

Title of Act

An act designating the state board of health as the agency to administer state matching funds to be used for the con-

Repealing Clause

Section 2 of Ch. 165, Laws 1969 repealed all acts and parts of acts in conflict therewith.

69-4809. Powers and duties of the state department of health. The department shall:

- (1) examine and approve or disapprove plans and other information needed to issue a permit;
- (2) collect and furnish information relating to the prevention and control of water pollution;
- (3) conduct necessary research and demonstrations concerning water pollution.

History: En. Sec. 129, Ch. 197, L. 1967.

69-4810. State water pollution control council—creation—members, appointment and term of office. There is a state water pollution control council whose members are:

- (1) the executive officer of the state department of health;
- (2) the state fish and game director;
- (3) the director of the water conservation board;
- (4) four (4) members appointed by the governor for terms of four (4) years as follows:
 - (a) a representative of industry concerned with the disposal of inorganic waste;
 - (b) a representative of industry concerned with the disposal of organic waste;
 - (c) a representative of agriculture;
 - (d) a representative of municipal government.

History: En. Sec. 130, Ch. 197, L. 1967.

69-4811. State water pollution control council—vacancy in office, filling—compensation of members. Terms of council members holding office on the effective date of this act shall not be affected. An appointment to an expired term shall be for four (4) years. An appointment to an unexpired term shall be for the remainder of the term. The four (4) appointed members shall receive twenty dollars (\$20) per day plus actual and necessary expenses incurred in performing their duties. Expenses shall be paid by the department of health from funds appropriated and allocated to water pollution control.

History: En. Sec. 131, Ch. 197, L. 1967.

69-4812. State water pollution control council—officers—meetings—quorum—designating of deputy by member. (1) The council shall select a chairman from among its members. The executive officer shall designate a member of the public health engineering staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) It shall hold at least two (2) regular meetings each calendar year. Special meetings shall be held at the call of the chairman or upon written request of two (2) or more members. A majority of the members is a quorum.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform his duties.

History: En. Sec. 132, Ch. 197, L. 1967.

69-4813. Powers and duties of the council. The council shall:

(1) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(2) investigate means of eliminating materials which pollute state waters, and prevent pollution that is detrimental to the public health, recreation, agriculture, industry, animals, fish, or aquatic life;

(3) adopt rules to guide the state board and department in the administration of this act;

(4) adopt a comprehensive program for prevention of pollution of waters;

(5) recommend and encourage research and demonstrations relating to water pollution;

(6) direct the state board and department regarding any action necessary as a result of research or demonstrations;

(7) formulate standards of water purity and classification of water according to its most beneficial use giving consideration to the economics of waste treatment and prevention;

(8) hold any hearings necessary for the proper administration of this act, receive complaints, and make investigations;

(9) utilize staff services of the state board and department as they are able to furnish within budgetary limits;

(10) exercise all incidental powers necessary to carry out the provisions of this chapter.

History: En. Sec. 133, Ch. 197, L. 1967.

69-4814. Hearings by council—notice. Before streams are classified, or standards established or modified, the council shall hold a public hearing. Notice of the hearing specifying the waters concerned and the classification, standards or modification of them shall be published at least once a week for three (3) consecutive weeks in a newspaper of general circulation in the area affected. Notice shall also be mailed directly to persons the council believes may be affected by the classification or standard.

History: En. Sec. 134, Ch. 197, L. 1967.

69-4815. Rehearing of order—procedure. Any order of the council or state board is final thirty (30) days after notice is given to the person affected unless a rehearing is held before that time. The procedure for a rehearing is:

(1) the person affected by the order shall request a rehearing before the council;

(2) before the thirty-first (31st) day after receipt of the request, the council shall hold a rehearing;

(3) a record or summary of the rehearing shall be filed with the council together with its findings of fact;

(4) a representative of the council may administer oaths, examine witnesses, and issue notices of the rehearing including subpoenas requiring the testimony of witnesses and the production of evidence;

(5) witnesses shall receive the same fees and mileage as in other civil actions;

(6) in case of failure to obey a notice of hearing or subpoena, the district court where the hearing is held has jurisdiction upon request by the council to issue an order requiring a person to appear and testify or produce evidence, and failure to obey shall be punished as contempt of district court;

(7) the council shall affirm, modify, or reverse the order of the council or the board and notify the person of its action;

(8) the order of the council or the state board is final thirty (30) days after notice of final action is served on the person by registered mail unless the person has appealed to the district court.

History: En. Sec. 135, Ch. 197, L. 1967.

69-4816. Appeal from decision at a rehearing—procedure. The procedure for appealing the decision of the council at a rehearing is:

(1) within thirty (30) days after the receipt of a copy of the council's decision, a person shall serve notice of appeal on the council through its secretary;

(2) for good cause, the court may extend the time for notice of appeal but not to exceed an additional sixty (60) days;

(3) the notice of appeal shall refer to the action and specify the ground of appeal;

(4) the notice of appeal with proof of service shall be filed with the clerk of the court before the eleventh day after service of the notice;

(5) any person affected may become a party by intervention as in a civil action upon showing cause;

(6) the attorney general shall represent the council if requested, or the council may appoint special counsel for the proceedings;

(7) no bond or deposit for cost is required of the state or council upon the appeal to the district court or any subsequent appeal;

(8) the trial shall be de novo;

(9) the court shall determine whether or not the council regularly pursued its authority, or whether the orders of the board and the findings of the council are sustained; and whether the orders and findings are reasonable under the circumstances of the case;

(10) an appeal from the decision of the district court may be made to the supreme court in the same manner provided in other civil cases;

(11) upon final determination, the council shall enter an order in accordance with the determination made by the court.

History: En. Sec. 136, Ch. 197, L. 1967.

69-4817. **Compliance with order required—extension of time.** Before the thirty-first (31st) day after an order of the state board or the council becomes final, or a court judgment affirming or reversing the order is entered, the person upon whom the order was served shall initiate steps to comply with the order. On good cause shown, the state board or council may extend the period for compliance for a reasonable time.

History: En. Sec. 137, Ch. 197, L. 1967.

69-4818. **Injunction to enforce order.** The council shall bring action for an injunction against any person who fails to comply with a final order of the state board or council.

History: En. Sec. 138, Ch. 197, L. 1967.

69-4819. **State officers to co-operate with state water pollution control council.** The council may require the assistance, co-operation, services, and use of records of all state agencies. State officers and employees shall co-operate with the council in furthering the purposes of this chapter.

History: En. Sec. 139, Ch. 197, L. 1967.

CHAPTER 49—PUBLIC WATER SUPPLY

- Section 69-4901. Public policy of the state.
 69-4902. Definitions.
 69-4903. Functions, powers and duties of state board of health.
 69-4904. Powers and duties of the state department of health.
 69-4905. Prohibited acts.
 69-4906. Drilling well to furnish water for public consumption—records required.
 69-4907. Appeal from rule or standard—injunction to require compliance.
 69-4908. Penalty.

69-4901. **Public policy of the state.** It is the public policy of this state to protect, maintain, and improve the quality and potability of water for public water supplies and domestic uses.

History: En. Sec. 140, Ch. 197, L. 1967.

69-4902. **Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

- (1) "Contamination" means impairment of the quality of state waters by sewage or industrial wastes creating a hazard to human health;
- (2) "Pollution" means the alteration of any of the properties of state waters which is detrimental to their most beneficial use;
- (3) "Drainage" means rainfall, surface, and subsoil water;
- (4) "Sewage" means domestic and manufacturing filth and waste;
- (5) "State waters" means any body of water, irrigation system, or drainage system either surface or underground;

(6) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves ten (10) or more families;

(7) "Person" means any person, firm, corporation, water or ice company, public institution, municipality or other political subdivision of the state.

History: En. Sec. 141, Ch. 197, L. 1967.

69-4903. Functions, powers and duties of state board of health. The state board of health shall:

(1) have general supervision over all state waters which are directly or indirectly being used by a person for a public water supply or domestic purposes, or source of ice;

(2) adopt rules, standards, and issue orders to prevent pollution and protect the quality of water and for the collection and analysis of samples of water used for drinking or domestic purposes giving legal notice of the adoption by publication or posting, and by filing a copy in the office of the clerk of the municipality or county where the rule or standard is effective.

History: En. Sec. 142, Ch. 197, L. 1967.

69-4904. Powers and duties of the state department of health. The state department of health shall:

(1) upon complaint to the department, or to the mayor or health officer of any municipality or to the managing board or officer of any public institution, make an investigation of any alleged pollution of a water supply, and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) have waters examined to determine their purity and the possibility that they may endanger public health;

(3) consult and advise authorities of cities and towns, and persons having or about to construct systems for water supply, drainage, waste water and sewage as to the most appropriate source of water supply and the best method of assuring its purity;

(4) advise persons as to the best method of purifying and disposing of their drainage, sewage, or waste water with reference to the existing and future needs of other persons and to prevent pollution;

(5) consult with persons engaged in or intending to engage in manufacturing or other business whose drainage, or sewage may tend to pollute any waters as to the best method of preventing pollution;

(6) with approval of the state board, fix fees for services rendered in analyzing water and inspections to cover costs of the service and deposit receipts in the general fund;

(7) establish and maintain experiment stations and conduct experiments to study the best methods of purifying water, drainage, waste water, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) enter upon any premises at reasonable times to determine sources of pollution or danger to water supplies and whether rules and standards of the state board are being obeyed;

(9) notify the attorney general of violations of laws on pollution of state waters.

History: En. Sec. 143, Ch. 197, L. 1967.

69-4905. Prohibited acts. A person shall not:

(1) discharge polluting matter of any kind that will pollute the quality of state waters used by a person for domestic use or as a source of supply by a city, town, public institution, water or ice company;

(2) discharge human excrement, sewage, drainage, refuse, or polluting matter into any state waters or on the banks of any state waters or into any abandoned or operating water well unless the sewage, drainage, refuse, or polluting water is purified to render it harmless as prescribed by the state board;

(3) build or operate any railroad, logging road, logging camp, electric or manufacturing plant of any kind on any watershed of a public water supply system, unless:

(a) the water supply is protected from pollution by sanitary precautions prescribed by the state board; and

(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;

(4) construct, alter, or extend any system of water supply, water distribution, sewer, drainage, waste water, or sewage disposal without first submitting necessary maps and plans and specifications to the department for their advice and approval.

History: En. Sec. 144, Ch. 197, L. 1967.

69-4906. Drilling well to furnish water for public consumption—records required. Every person drilling a water well to furnish water for public consumption shall keep a complete record of the depth, thickness and character of different strata, and other information prescribed by the board. Data shall be furnished to the department on forms prescribed by it. These data are available to the public at all reasonable times.

History: En. Sec. 145, Ch. 197, L. 1967.

69-4907. Appeal from rule or standard—injunction to require compliance. Any person aggrieved by a rule or standard of the state board may appeal to the district court. While the appeal is pending, the rule or standard of the state board is in force. The state board may request an injunction from the district court to require compliance with rules and standards.

History: En. Sec. 146, Ch. 197, L. 1967.

69-4908. Penalty. Violation of this chapter, or any rule or order of the state board or department under the provisions of this chapter, is punishable for each offense by a fine of not more than one thousand dollars (\$1,000), imprisonment for not more than one (1) year, or both.

History: En. Sec. 147, Ch. 197, L. 1967.

CHAPTER 50—SUBDIVISIONS

- Section 69-5001. Public policy of the state.
69-5002. "Subdivision" defined.
69-5003. Filing of map or plat subject to sanitary restrictions—submission to and approval by state department of health—removal or modification of restrictions.
69-5004. Filing or recording of noncomplying map or plat prohibited.
69-5005. Rules for administration and enforcement of chapter.

69-5001. Public policy of the state. It is the public policy of this state to extend present laws controlling water supply and sewage disposal to include individual wells affected by adjoining sewage disposal and individual sewage systems.

History: En. Sec. 148, Ch. 197, L. 1967.

69-5002. "Subdivision" defined. As used in this chapter, unless the context clearly indicates otherwise, "subdivision" means any tract of land which is divided into two (2) or more parcels, any parcel of which is less than five (5) acres in size along an existing or proposed street, highway, easement, or right of way for sale, rent, or lease as residential, industrial, or commercial building lots described by reference to a map or survey of the property.

History: En. Sec. 149, Ch. 197, L. 1967.

69-5003. Filing of map or plat subject to sanitary restrictions—submission to and approval by state department of health—removal or modification of restrictions. Any subdivision map or plat filed with the county clerk and recorder shall be subject to a sanitary restriction which must be recorded on, or attached to, the map or plat by the county clerk and recorder. No building or shelter which necessitates supplying water or sewage or waste disposal facilities for persons shall be erected until the sanitary restriction has been removed or modified. Before any restriction can be removed or modified by the county clerk and recorder, the map or plat of the subdivision must be submitted to the state department of health for their approval. Conditional approval may be given by the department after construction of a part of the water and sewage system, but permanent buildings shall not be occupied until the restriction has been removed or modified. The county clerk and recorder shall remove the sanitary restriction upon notice from the department that:

(1) the department approves plans and specifications for the public water facility and sewage facilities; or

(2) the subdivision map or plat is approved by the department for a subdivision not providing public water or sewage systems.

History: En. Sec. 150, Ch. 197, L. 1967.

69-5004. Filing or recording of noncomplying map or plat prohibited. The county clerk and recorder shall not file or record any map or plat showing a subdivision unless it complies with the provisions of this chapter.

History: En. Sec. 151, Ch. 197, L. 1967.

69-5005. Rules for administration and enforcement of chapter. The state board shall make rules, including adoption of sanitary standards, necessary for administration and enforcement of this chapter. The rules and standards shall provide the basis for approving subdivision maps or plats for various types of water and sewage facilities, both public and private, and shall be related to size of lots, contour of land, porosity of soil, ground water level, type and construction of private water and sewage facilities, and other factors affecting public health.

History: En. Sec. 152, Ch. 197, L. 1967.

CHAPTER 51—CADAVERS

Section 69-5101. Procurement of cadavers by medical schools in the United States authorized.

69-5102. Procedure to procure cadavers.

69-5103. Limitations on right to perform autopsy or dissection.

69-5104. Qualifications to perform autopsies—written report of findings.

69-5105. Dissection of human body by licensed mortician.

69-5106. Unauthorized post-mortem examinations—penalty.

69-5101. Procurement of cadavers by medical schools in the United States authorized. Any medical school in the United States may procure unclaimed human bodies for use in teaching and demonstrations of anatomy.

History: En. Sec. 153, Ch. 197, L. 1967.

69-5102. Procedure to procure cadavers. The procedure to procure a human body for use in teaching and demonstrations of anatomy is:

(1) the medical school shall apply to the person or organization having custody of the unclaimed body asking that the body be delivered to the school for teaching and demonstration of anatomy;

(2) the medical school shall file a notarized statement with the state department of health showing that proper equipment is available for proper handling, security, and preservation of human bodies.

(3) the body shall be kept at the unit, institution, or hospital, for at least three (3) weeks after the date of death before it can be used;

(4) the medical school shall pay the costs of special preparation and transportation of the body;

(5) a burial permit shall accompany each body, and the medical school shall properly register the body and arrange for burial by a licensed mortician at the expense of the medical school;

(6) if there was no request by the deceased person that his body be buried immediately, the person or organization having custody may deliver an unclaimed body to the medical school applying. The medical school shall file a statement with the department stating that the body will be used only for teaching and demonstration of anatomy.

History: En. Sec. 154, Ch. 197, L. 1967.

69-5103. Limitations on right to perform autopsy or dissection. The right to perform an autopsy, or to dissect a human body, or make any post-

mortem examination involving dissection of any part of a body, is limited to cases where:

- (1) specifically authorized by law;
- (2) a coroner is authorized to hold an inquest and then only to the extent that the coroner may authorize dissection or autopsy;
- (3) authorized by a written statement of the deceased, whether the statement is of a testamentary character or otherwise;
- (4) authorized by the husband, wife, or next of kin responsible by law for burial to determine the cause of death and then only to the extent so authorized;

(5) the decedent died in a hospital operated by the United States Veterans Administration, Montana School for the Deaf and Blind, or an institution in the department of institutions leaving no surviving husband, wife, or next of kin responsible by law for burial, and the manager or superintendent of the hospital or institution where death occurred obtains authority on order of the district court to determine the cause of death and then only to the extent authorized by court order;

(6) the decedent died in the state, was a resident, but left no surviving husband, wife, or next of kin charged by law with the duty of burial and the attending physician obtains authority on order of the district court for the purpose of ascertaining the cause of death, and then only to the extent authorized by court order after it has been shown that the physician made diligent search for the next of kin responsible by law for burial.

History: En. Sec. 155, Ch. 197, L. 1967.

69-5104. Qualifications to perform autopsies—written report of findings. All autopsies of a human body shall be performed by a physician legally authorized to practice medicine in this state. Upon completion, the physician shall send a written report of his findings, including the cause of death, to the next of kin of the decedent, representative of the decedent's estate, or other person lawfully requesting the report.

History: En. Sec. 156, Ch. 197, L. 1967.

69-5105. Dissection of human body by licensed mortician. This act shall not restrict the right of a licensed mortician to dissect a human body for proper preparation of the body for burial, cremation, or other disposition provided by law.

History: En. Sec. 157, Ch. 197, L. 1967.

69-5106. Unauthorized post-mortem examinations—penalty. Unless authorized by law, any person who performs an autopsy, dissection, or other post-mortem examination or causes it to be made, is guilty of a misdemeanor. Upon conviction he shall be punished by a fine not exceeding five hundred dollars (\$500).

History: En. Sec. 158, Ch. 197, L. 1967.

CHAPTER 52—HOSPITALS, HOSPITAL RELATED FACILITIES, AND
LONG-TERM CARE FACILITIES

- Section 69-5201. Definitions.
- 69-5202. Facilities operated by federal agencies exempt.
- 69-5203. License required—duration—transfer prohibited—display.
- 69-5204. License fees.
- 69-5205. Application for license—procedure.
- 69-5206. Issuance and renewal of licenses—inspection of facility and records—provisional license.
- 69-5207. Denial of application for long-term care facility.
- 69-5208. Revocation or refusal to renew long-term care facility.
- 69-5209. Denial, suspension or revocation of hospital or hospital related facility licenses—grounds.
- 69-5210. Denial, suspension or revocation of license—procedure.
- 69-5211. Review of decision of the state board of health.
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- 69-5218. Information confidential.
- 69-5219. Records and reports required of licensees.
- 69-5219.1. Registration of registered facilities.
- 69-5220. Injunction.
- 69-5221. Penalties.

69-5201. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Hospital" means a place which for twenty-four (24) hours or more in each week:

(a) provides diagnosis, treatment, or care for two (2) or more non-related individuals who are suffering from illness, disease, injury, or deformity; or

(b) provides obstetrical, surgical, or other medical or nursing care for two (2) or more non-related individuals.

(c) The term includes public health centers and medical facilities.

(2) "Hospital related facility" means a facility which provides:

(a) diagnosis, treatment, or care of individuals suffering from mental illness or mental retardation; or

(b) care or treatment for more than one (1) woman within six (6) months who is pregnant or who has delivered not more than ten (10) days before. The woman may not be related by blood or marriage to the person who owns or manages the facility.

(3) "Long-term care facility" means a place operated for profit or not, which provides to a total of four (4) or more persons, any of the following: nursing, personal care, and maintenance; provided that this decision applies only to such persons as are unable to properly care for themselves. "Long-term care facility" also means a place operated for profit or not, which provides sheltered care to four (4) or more aged persons not related to the operator by blood or marriage. It includes:

(a) "extended care facilities" which are facilities primarily furnishing regular, organized, medical services for skilled convalescent and/or rehabilitative care, following transfer from a hospital after a period of acute illness;

(b) "nursing homes" which are facilities furnishing skilled nursing care and related services;

(c) "personal care homes" which are facilities providing personal care and services to residents not in need of skilled nursing care;

(d) "boarding homes" which are facilities providing only maintenance and sheltered care;

(e) facilities providing combinations of services provided by extended care facilities, nursing homes, personal care homes, and boarding homes.

(4) "Long-term care facility" does not include:

(a) a hospital, sanitarium, or other institution whose principal activity is the care and treatment of persons suffering from mental or nervous illness;

(b) hotels, motels, boarding houses, rooming houses, or similar accommodations.

(5) "Person" means any person, firm, partnership, association or corporation, or governmental unit;

(6) "Governmental unit" means the state, a state agency, any county, municipality, political subdivision of the state or an agency of any political subdivision;

(7) "Resident" means a person who is in a long-term care facility as a patient or for personal or sheltered care;

(8) "Facility" means a hospital, hospital related facility or long-term care facility.

(9) "Registered facility" means a place which would otherwise fall within the above definition of "long-term care facility," but which provides nursing, personal care, or maintenance care to more than one (1) and less than four (4) persons.

History: En. Sec. 159, Ch. 197, L. 1967; amd. Sec. 1, Ch. 290, L. 1969.

Amendments

The 1969 amendment rewrote subdivision (3), which read, "'Long-term care facility' means a place operated for profit or not, which provides nursing, personal care, or maintenance to four (4) or more persons who are unable to properly care

for themselves, or provides sheltered care to four (4) or more aged persons not related to the operator by blood or marriage. It includes:"; inserted item (a); redesignated former items (a) through (d) as present items (b) through (e); in item (e), inserted "extended care facilities" after "services provided by"; and added item (9).

69-5202. Facilities operated by federal agencies exempt. This chapter does not apply to facilities operated by an agency of the federal government.

History: En. Sec. 160, Ch. 197, L. 1967.

69-5203. License required — duration — transfer prohibited — display.

(1) No person may operate a facility unless licensed by the state department of health. Licenses shall be for one (1) year unless issued for a shorter period. A license is valid only for the person and premises for

which it was issued. A license may not be sold, assigned or transferred.

(2) Upon discontinuance of the operation or of transfer of ownership of a facility, the license must be returned to the department.

(3) Licenses shall be displayed in a conspicuous place near where patients or residents are admitted.

History: En. Sec. 161, Ch. 197, L. 1967.

69-5204. License fees. The department shall collect a fee of twenty dollars (\$20) for each license issued and deposit receipts in the state general fund.

History: En. Sec. 162, Ch. 197, L. 1967.

69-5205. Application for license—procedure. The procedure to apply for a license is:

(1) at least thirty (30) days prior to the opening of a facility and annually thereafter, application is made to the department accompanied by the license fee of twenty dollars (\$20);

(2) the application shall contain:

(a) the name and address of the applicant if an individual; or the name and address of each member if a firm, partnership or association; or the name and address of each officer if a corporation;

(b) the location of the facility;

(c) the name of the person or persons who will manage or supervise the facility;

(d) the number and type of patients or residents for which care is provided;

(e) any information which the state board of health may require pertaining to the number, experience, and training of employees;

(f) information on ownership, contract or lease agreement, if operated by a person other than the owner.

History: En. Sec. 163, Ch. 197, L. 1967.

69-5206. Issuance and renewal of licenses—inspection of facility and records—provisional license. (1) On receipt of a new or renewal application, the department, or its authorized agent, shall inspect the facility. If minimum standards are met and the proposed staff is qualified, the department shall issue a license for one (1) year. If minimum standards are not met, the department may issue a provisional license for less than one (1) year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community.

(2) Licensed premises shall be open to inspection and access to all records shall be granted at all reasonable times.

History: En. Sec. 164, Ch. 197, L. 1967.

69-5207. Denial of application for long-term care facility. The department may deny an application for long-term care facility license if:

(1) it fails to meet minimum standards prescribed under section 171 [69-5213] of this act;

(2) the staff is insufficient in number or unqualified by lack of training or experience;

(3) the applicant or any person managing it has been convicted of a felony or otherwise shows evidence of character traits inimical to the health and safety of residents;

(4) it does not have the financial ability to operate in accordance with law, or rules, or standards adopted by the state board.

History: En. Sec. 165, Ch. 197, L. 1967.

69-5208. Revocation or refusal to renew long-term care facility. The department may revoke or refuse to renew a long-term care facility license if:

(1) there is cruelty or indifference affecting the welfare of the residents;

(2) there is misappropriation of the property or funds of a resident;

(3) there is conversion of the property of a resident without his consent;

(4) any provision of this chapter, or rules or standards adopted by the state board are violated;

(5) any reason enumerated in section 165 [69-5207] of this act exists.

History: En. Sec. 166, Ch. 197, L. 1967.

69-5209. Denial, suspension or revocation of hospital or hospital related facility licenses—grounds. The department may deny, suspend, or revoke a hospital or hospital related facility license if it finds there has been substantial failure to comply with the provisions of this chapter.

History: En. Sec. 167, Ch. 197, L. 1967.

69-5210. Denial, suspension or revocation of license—procedure. (1) If a license is denied, suspended, or revoked, the procedure is:

(a) notice is given by registered mail or personal service to the applicant or licensee stating the reason for the proposed action and specifying a date, not less than fifteen (15) days after mailing or service, for a hearing before the state board;

(b) witnesses may be subpoenaed by either party;

(c) in accordance with rules adopted by the state board, a hearing is held before the state board;

(d) a full and complete record shall be kept of all proceedings, but need not be transcribed unless the decision is appealed to the district court;

(e) on the basis of the hearing, or default of the applicant, the state board shall make findings of fact and conclusions of law;

(f) the applicant or licensee shall be notified by registered mail or personal service of the state board's decision;

(g) the decision of the state board is final thirty (30) days after it is mailed or served unless the applicant or licensee commences an action in the district court to appeal the decision.

(2) A copy of the transcript of any hearing may be obtained by any person on payment of the costs of preparing the copy.

History: En. Sec. 168, Ch. 197, L. 1967.

69-5211. Review of decision of the state board of health. If any applicant or licensee is aggrieved by the decision of the state board after the hearing provided in section 168 [69-5210] of this act, the procedure is:

(1) before the thirty-first (31st) day after mailing or service of the state board's decision, the applicant or licensee shall file a complaint in the district court where the facility is located or will be located;

(2) summons shall be issued, and proceedings shall be conducted as in the case of other civil actions;

(3) the state board shall file a certified copy of the record and decision from the hearing with the court upon filing its answer to the complaint;

(4) findings of fact by the state board shall be conclusive unless substantially contrary to the evidence, or unless in conflict with law;

(5) the court may remand the case to the state board for further evidence if good cause is shown;

(6) on rehearing the state board may affirm, reverse, or modify its decision;

(7) the court may affirm, reverse, or modify the rehearing decision of the state board;

(8) either party may appeal the final decision of the district court;

(9) pending final disposition of a matter appealed, the status quo of the applicant or licensee shall be preserved unless the court orders otherwise.

History: En. Sec. 169, Ch. 197, L. 1967.

69-5212. Alteration or addition to facility—approval of plans and specifications by the state board of health. The state board may adopt rules to require an applicant or licensee who contemplates alteration or addition to a facility to submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction. Approval may be given only if the plans and specifications conform to the state or the municipal building code which applies to the facility.

History En. Sec. 170, Ch. 197, L. 1967; **Amendments**
amd. Sec. 21, Ch. 366, L. 1969.

The 1969 amendment added the last sentence.

69-5213. Rules and standards for long-term care facilities—adoption and publication by the state board of health. (1) Subject to the provisions of subsection (4) of this section, the board shall adopt and publish rules and minimum standards for all long-term care facilities distinguishing between those for nursing care, personal care, sheltered care, and facilities providing combinations thereof.

(2) Standards shall relate to:

(a) location and construction of the facility including plumbing, heating, lighting, ventilation, and other conditions affecting the health, safety, or comfort of residents;

(b) number and qualifications of personnel;

(c) sanitary conditions including water supply, sewage disposal, food handling, laundries, and general hygiene;

(d) diet based on good nutritional practice, needs of residents, and recommendations of attending physicians;

(e) fixtures and equipment essential to the health and safety of residents;

(f) age and physical requirements for admission;

(g) records of residents' medical history, funds, property, and contract with the operator or manager;

(h) medical supervision and resident care including use of physical restraints;

(i) reporting of contagious diseases, epidemics, or food poisoning;

(j) administration including the storage and handling of medications, narcotics, barbiturates, and compressed gases;

(k) visiting hours and areas.

(3) All long-term care facilities of nonfire-resistant construction, of two (2) stories or more in height having ten (10) or more residents, must have an automatic sprinkler system approved by the state fire marshal. The fire marshal shall furnish the state board with certificates of compliance with fire protection rules and standards.

(4) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the state building code council and filing with the secretary of state.

History: En. Sec. 171, Ch. 197, L. 1967; amd. Sec. 22, Ch. 366, L. 1969.

Amendments

The 1969 amendment inserted "subject to the provisions of subsection (4) of this section" at the beginning of subsection (1); and added subsection (4).

Employment of Nurses

Chapter 250, Laws of 1967, enacted temporary provisions relating to employment practices in relation to nursing personnel.

Chapter 250 read:

"An act providing for the adoption of orderly procedures for establishing desirable employment practices for registered professional and licensed practical nurses employed in health care facilities; establishing procedures for establishing standards and procedures for employment relationships.

"Be it enacted by the legislative assembly of the state of Montana:

"Section 1. The purpose of this act is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and in-

firm in the state of Montana, and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

"Section 2. Definitions. As used in this act, unless the context clearly requires otherwise:

"(1) 'Appropriate unit' means a homogeneous group of employees (as herein defined) of a health care facility, having similar duties and qualifications, determined pursuant to section 4 of this act.

"(2) 'Employee' means a registered professional or licensed practical nurse performing services for compensation for a health care facility, but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligations to the order.

"(3) 'Health care facility' means a hospital or nursing home; or other agency or establishment, employing employees as defined in this act, whether operated publicly or privately, having as one of its principal purposes the preservation of

health or the care of sick or infirm individuals or both.

"(4) 'Board' or 'board of health' means the state board of health.

"Section 3. It is an improper employment practice for a health care facility to do one or more of the following:

"(1) Interfere with or restrain or coerce employees in any manner in the exercise of their right of self organization;

"(2) Initiate, create, dominate, contribute to or interfere with the formation or administration of an employee organization that has collective bargaining as one of its principal functions;

"(3) Discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

"(4) Refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing, and have their representative sign, any agreement arrived at through negotiations and discussion;

"(5) Unilaterally exclude from work or prevent from working, or discharge any one or more employees, when the purpose of such action is, in whole or in part, to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

"Section 4. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

"(2) In the event no such mutual consent is available, then either the facility, or representatives of employees may apply to the state board of health and said board, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

"(3) In determining such appropriate unit professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.

"Section 5. An employee organization is considered to be the duly designated

representative of all the employees in an appropriate unit for the purpose of section 3 of this act if it can show evidence that bargaining rights have been assigned to it by a majority of the employees in that unit.

"Section 6. (1) If the right of an employee organization to represent the employees in an appropriate unit is questioned by the authority in charge of the facility employing the employees, the employee organization may petition the board of health for a determination. The board of health, or his representative, shall investigate and determine the composition of an appropriate unit, if such determination has not previously been made under section 4 of this act, and shall determine the representative, if any, designated to represent the employees in the appropriate unit.

"(2) An employee organization found by the state board of health to be authorized by at least thirty per cent (30%) of the employees in an appropriate unit may apply for an election by secret ballot to determine its right to represent the employees in that unit. If more than one employee organization claims to represent employees in that unit, the state board of health may conduct an election by secret ballot to determine which is authorized to represent the unit. If an employee organization receives a majority of the valid votes cast at the election, it is considered to be authorized to represent all the employees in that unit for the purpose of section 3 of this act.

"(3) A determination under this section remains in effect for at least one (1) year.

"Section 7. The board of health, a health care facility, or an employee organization qualified to apply for an election under section 6 of this act may, in the name of its members, or in its name, institute proceedings to restrain the commission of any improper practice listed in section 3 of this act. The proceeding may be instituted in the district court for any county in which the health care facility does business. The court in such an action may grant mandatory or prohibitory relief.

"Section 8. This act shall be severable, and should any part or provision hereof be held to be unconstitutional such declaration will not invalidate the remaining provisions hereof.

"Section 9. This being an act to assist in the public health and safety, it shall be in full force and effect from July 1, 1967 to June 30, 1969."

69-5214. Hospital and long-term care facility advisory council—members appointed by governor—functions. (1) The governor shall appoint a hospital and long-term care facility advisory council to consult with the

state board in administering this chapter and statutes relating to hospitals, medical and related facilities survey and construction contained in sections 180 through 192 [69-5301 through 69-5313] of this act.

(2) The council consists of:

(a) the executive officer of the department of health who is ex officio chairman;

(b) the state administrator of public welfare, ex officio;

(c) the director of the department of institutions, ex officio;

(d) representatives of nongovernmental organizations or groups, and public agencies, concerned with the operation and construction of hospitals and hospital related facilities;

(e) two (2) persons of recognized experience in the operation of long-term care facilities;

(f) representatives of consumers familiar with the need for services provided by hospitals, hospital related facilities, and long-term care facilities;

(g) additional members required for benefits under any federal law.

History: En. Sec. 172, Ch. 197, L. 1967.

69-5215. Hospital and long-term care facility advisory council—terms of office of members—meetings—compensation. (1) Members of the first council shall serve for one (1), two (2), or three (3) years as designated by the governor. The governor shall avoid expiration of the terms of more than one-third ($\frac{1}{3}$) of the initial appointive members' terms in any twelve (12) month period. After the initial appointments, appointed members serve for three (3) year terms. Appointments for unexpired terms shall be for the remainder of the term.

(2) The council meets at the call of the chairman, or at the request of four (4) of the appointed members.

(3) Members, except ex officio members, are reimbursed at the rate of ten dollars (\$10) per day for actual expenses and eight cents (8¢) per mile for travel.

History: En. Sec. 173, Ch. 197, L. 1967.

69-5216. Rules and standards for facilities licensed under this chapter. With the advice of the hospital and long-term care facility advisory council, the state board shall adopt rules and standards for facilities licensed under this chapter. Rules and standards for buildings and equipment must conform to the state or municipal building code which applies to the facility. The department shall extend a reasonable time for compliance with rules after adoption by the state board.

History: En. Sec. 174, Ch. 197, L. 1967;
amd. Sec. 23, Ch. 366, L. 1969.

Amendments

The 1969 amendment inserted the second sentence.

69-5217. Discrimination among patients of physicians prohibited—license required of spiritual healing institutions. (1) No person who

operates a facility may discriminate among the patients of licensed physicians. The free and confidential professional relationship between licensed physician and patient shall continue and remain unaffected. Physicians shall continue to have direction over their patients.

(2) This chapter, and rules and standards adopted by the state board, may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denomination. However, a license is required and all other minimum standards apply.

History: En. Sec. 175, Ch. 197, L. 1967.

69-5218. Information confidential. Information received by the department or board through reports, inspection, or provisions of this chapter may not be disclosed in a way which would identify individuals or facilities, except in a proceeding involving the question of licensure or as required by the federal government for certification or preparation of a state plan.

History: En. Sec. 176, Ch. 197, L. 1967.

69-5219. Records and reports required of licensees. Licensees shall keep records, and make reports, as required by the state board. Before February 1 of each year, every person licensed under this chapter shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the board.

History: En. Sec. 177, Ch. 197, L. 1967.

69-5219.1. Registration of registered facilities. A "registered facility" will register itself with the state department of health, annually, on or before the 15th day of March of each year, by filing with said department, on a form provided by said department, such information as said department shall require.

History: En. 69-5219.1 by Sec. 2, Ch. 290, L. 1969.

Title of Act

An act amending section 69-5201, R. C. M. 1947, further defining long-term care

facility to include extended care facilities and the provision of care to a total of four (4) or more persons; adding a new section to Title 69, chapter 52, R. C. M. 1947, to require registration of facilities with the department of health.

69-5220. Injunction. The state board or department, on advice of the attorney general, may maintain an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of a facility which is endangering health and welfare.

History: En. Sec. 178, Ch. 197, L. 1967.

69-5221. Penalties. A person who violates provisions of this chapter is guilty of a misdemeanor. On conviction he shall be fined not more than one hundred dollars (\$100) for the first offense, and not more than

three hundred dollars (\$300) for each subsequent offense. Each day of a continuing violation after conviction is a separate offense.

History: En. Sec. 179, Ch. 197, L. 1967.

CHAPTER 53—HOSPITALS, MEDICAL AND RELATED FACILITY SURVEY AND CONSTRUCTION

Section 69-5301. Definitions.

- 69-5302. State department of health as principal state agency for hospital construction—contracts with federal government.
- 69-5303. Powers and duties of state department of health.
- 69-5304. Rules for administration of this chapter—adoption by state board of health.
- 69-5305. Submission of hospital construction plans to federal agencies—federal funds, use and disposition—inspection of projects—consultants' contracts.
- 69-5306. Publicity as to plans before they are submitted to a federal agency—public hearing.
- 69-5307. Minimum standards for maintenance and operation of hospitals, medical and related facilities.
- 69-5308. State plan.
- 69-5309. Applications for construction projects—who may file.
- 69-5310. Allowance of application, forwarding to federal agency—denial of application, opportunity for hearing.
- 69-5311. Federal funds—acceptance authorized—use and disposition.
- 69-5312. Consolidated applications by two or more counties.
- 69-5313. Discrimination prohibited in subsidized facilities.

69-5301. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Federal acts" are federal statutes for the construction of medical or related facilities.

(2) "Hospital" includes public health centers and general, pulmonary disease, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities such as laboratories, out-patient departments, nurses' homes and training facilities, and central service facilities created in connection with hospitals, but does not include a hospital furnishing primarily domiciliary care.

(3) "Medical facility" means a diagnostic or diagnostic and treatment center, rehabilitation facility, facility for long-term care as defined by federal acts, and other medical facilities for which federal aid is or may be authorized.

(4) "Related facility" includes a facility devoted to the diagnosis, treatment, or care of individuals afflicted with mental illness or mental retardation.

(5) "Health center" means a publicly owned facility providing public health services including publicly owned laboratories, clinics, and administrative offices operated in connection with the facility.

(6) "Nonprofit hospital or nonprofit medical facility" means a hospital or medical facility owned or operated by one (1) or more nonprofit corporations or associations if no part of the net earnings inure to the benefit of any private shareholder or individual.

(7) "Council" means the hospital and long-term care facility advisory council created by section 172 [69-5214] of this act.

History: En. Sec. 180, Ch. 197, L. 1967.

69-5302. State department of health as principal state agency for hospital construction—contracts with federal government. The state department of health is the principal state agency for establishing and administering a statewide plan for construction, modernization, alteration, equipment, maintenance, or operation of any hospital, medical, or related facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. With approval of the state board of health, the executive officer of the state department of health may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate medical and related facilities and services.

History: En. Sec. 181, Ch. 197, L. 1967.

69-5303. Powers and duties of state department of health. The department shall:

- (1) inventory existing hospitals, medical and related facilities;
- (2) survey the need for construction or alteration of hospitals;
- (3) develop and administer a state plan for the construction and alteration of public and other nonprofit hospitals, medical and related facilities;
- (4) if desirable, enter into agreements after approval by the state board for the utilization of facilities and services of other departments, agencies, and institutions, public or private;
- (5) accept and deposit with the state treasurer and spend any grant, gift, or contribution made to meet costs of carrying out the purposes of this act.

History: En. Sec. 182, Ch. 197, L. 1967.

69-5304. Rules for administration of this chapter—adoption by state board of health. The state board shall adopt necessary rules for the administration of this chapter.

History: En. Sec. 183, Ch. 197, L. 1967.

69-5305. Submission of hospital construction plans to federal agencies—federal funds, use and disposition—inspection of projects—consultants' contracts. With approval of the state board, the department shall:

- (1) prepare and review a construction program in accordance with federal requirements that will provide adequate hospital, medical and related facilities to people in the state providing, as far as possible, for distribution throughout the state to make all types of services reasonably acceptable to all persons;
- (2) submit to federal agencies state plans including those for the hospital, medical and related facilities construction program and modifications of it providing for the establishment and operation of hospital, medical and related facilities construction activities in accordance with federal requirements;
- (3) make application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities. Federal funds shall be deposited in the state treasury and used only for the purposes

specified by law. Money which is not spent for those purposes shall be repaid to the federal government;

(4) after approval of a plan by the appropriate federal agency, publish a description in newspapers having general circulation throughout the state, and make the plan available upon request to all persons or organizations;

(5) inspect construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications, and that payment of federal funds is due to the applicant;

(6) require reports, and make inspections and investigations, as necessary or required by the federal agency;

(7) contract with consultants for services which are performed on a part-time or fee-for-service basis not involving administrative duties.

History: En. Sec. 184, Ch. 197, L. 1967.

69-5306. Publicity as to plans before they are submitted to a federal agency—public hearing. Before submitting plans to a federal agency, the state board shall give adequate publicity including a general description of the plans, and may hold a public hearing at which all persons or organizations may express their views.

History: En. Sec. 185, Ch. 197, L. 1967.

69-5307. Minimum standards for maintenance and operation of hospitals, medical and related facilities. After consultation with the council, the state board shall prescribe minimum standards for the maintenance and operation of hospitals, medical and related facilities receiving federal aid for construction under the state plan.

History: En. Sec. 186, Ch. 197, L. 1967.

69-5308. State plan. The state plan shall specify relative need for the projects included in the construction program in accordance with regulations prescribed under federal acts, and provide for the construction, maintenance, and operation in the order of relative need determined by the state board.

History: En. Sec. 187, Ch. 197, L. 1967.

69-5309. Applications for construction projects—who may file. Applications for hospital, medical and related facilities construction projects may be submitted by a state agency, a political subdivision, or by any public or nonprofit agency authorized to construct and operate a hospital, medical or related facility.

History: En. Sec. 188, Ch. 197, L. 1967.

69-5310. Allowance of application, forwarding to federal agency—denial of application, opportunity for hearing. If the state board, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that an application com-

plies with state and federal requirements and conforms to the state plan, the state board shall forward the application to the appropriate federal agency. If an application is denied, the applicant shall have an opportunity for a fair hearing.

History: En. Sec. 189, Ch. 197, L. 1967.

69-5311. Federal funds—acceptance authorized—use and disposition. The state board may accept federal funds. All federal funds received shall be deposited in the state treasury. The executive officer shall transmit federal funds to applicants for work performed, or purchases made, in carrying out approved projects. Claims for all payments shall be approved by the executive officer.

History: En. Sec. 190, Ch. 197, L. 1967.

69-5312. Consolidated applications by two or more counties. Boards of county commissioners of two (2) or more counties may submit a consolidated application for a single hospital, medical facility, or health center serving each of the counties included in the application. Any statutes investing counties with powers to construct, maintain, and operate hospitals or medical facilities directly, or by lease or contract, may be utilized for this joint action. All statutes governing submission of questions of establishing a hospital or medical facility, hospital or medical facility construction, issuance of bonds, method of operation, and requiring a majority vote of taxpayers on the questions shall apply. Concurrent and joint action of two (2) or more counties and approval by a majority of the voters in each county is required to authorize the issuance of bonds, construction, and contracts under a consolidated plan.

History: En. Sec. 191, Ch. 197, L. 1967.

69-5313. Discrimination prohibited in subsidized facilities. No person shall deny another person the use of any facility constructed in whole or in part under this chapter in a professional or other capacity, or discriminate against another person on the grounds of race, color, or national origin.

History: En. Sec. 192, Ch. 197, L. 1967.

CHAPTER 54—CESSPOOLS, SEPTIC TANKS, AND PRIVIES

- Section 69-5401. License required.
 69-5402. Application for license—form and contents.
 69-5403. Licenses—title—numbering—duration—transfer prohibited—fees, disposition.
 69-5404. Vehicle of licensee—marking.
 69-5405. Permit from local health officer—examination—fee.
 69-5406. Rules for administration of chapter—adoption.
 69-5407. License not required of municipalities.
 69-5408. Enforcement of chapter—violation of this chapter or order of a health officer is a misdemeanor.

69-5401. License required. No person, partnership, firm, or corporation shall engage in the business of cleaning cesspools, septic tanks or

privies unless licensed by the state department of health. The department may deny, suspend, or revoke a license for noncompliance with this chapter or rules adopted by the state board of health.

History: En. Sec. 193, Ch. 197, L. 1967.

69-5402. Application for license—form and contents. Application for a license is made to the department. The application shall show:

- (1) the name in full, and if a partnership, the name of each partner;
- (2) place of business;
- (3) place of residence of the applicant or applicants;
- (4) number of units and type of equipment to be used;
- (5) a statement that the applicant will comply with rules adopted by the state board under this chapter;
- (6) the signature of the individual, authorized officer of the firm or corporation, or managing partner of the partnership applying.

History: En. Sec. 194, Ch. 197, L. 1967.

69-5403. Licenses—title—numbering—duration—transfer prohibited—fees, disposition. Licenses issued by the department shall be titled "Montana Sanitary Licensee," and numbered consecutively beginning with the number ten (10). Licenses expire on December 31 of each calendar year. Licenses are not transferable. The fee for each license is five dollars (\$5). Fees shall be deposited in the state general fund.

History: En. Sec. 195, Ch. 197, L. 1967.

69-5404. Vehicle of licensee—marking. Persons licensed shall paint on the side of each vehicle used the words "Montana Sanitary Licensee" and immediately under those words shall paint "License No. — (insert number of license)." License numbers shall be at least one and one-half (1½) inches high and in a distinct color contrasting with the background.

History: En. Sec. 196, Ch. 197, L. 1967.

69-5405. Permit from local health officer—examination—fee. Each person licensed under the provisions of this chapter who cleans a cesspool, septic tank, or privy shall secure a permit from the local health officer, or his authorized representative, having jurisdiction. The permit shall be issued only after satisfactory examination of the applicant's knowledge of sanitary principles, laws and ordinances; reliability in observing sanitary laws; and ability to clean the septic tank, cesspool, or privy without endangering human health or safety. The permit shall contain the name of the applicant, date of cleaning, name and address of the owner of the cesspool, septic tank or privy, and the place and means of disposing of the waste. The person issuing the permit shall be paid a fee of one dollar (\$1).

History: En. Sec. 197, Ch. 197, L. 1967.

69-5406. Rules for administration of chapter—adoption. The state board shall adopt necessary rules for carrying out the provisions of this chapter.

History: En. Sec. 198, Ch. 197, L. 1967.

69-5407. License not required of municipalities. The license provisions of this chapter do not apply to any county or municipality which desires to clean septic tanks, cesspools, or privies publicly owned or controlled by them. However, counties and municipalities shall comply with rules adopted by the state board for cleaning cesspools, septic tanks, or privies.

History: En. Sec. 199, Ch. 197, L. 1967.

69-5408. Enforcement of chapter—violation of this chapter or order of a health officer is a misdemeanor. State and local health officers, and their representatives, are responsible for the enforcement of this chapter. Any person who fails to comply with provisions of this chapter or orders of a health officer made under this chapter for the protection of human health is guilty of a misdemeanor. Upon conviction he shall be fined not more than one hundred dollars (\$100), imprisoned for not more than thirty (30) days, or both, for each offense. Fines collected shall be deposited in the general fund of the county in which the action is brought.

History: En. Sec. 200, Ch. 197, L. 1967.

CHAPTER 55—PUBLIC SWIMMING POOLS AND BATHING PLACES

Section 69-5501. Public policy of this state.

69-5502. Definitions.

69-5503. Sanitation—rules—adoption by state board of health.

69-5504. Sanitation—supervision by state department of health.

69-5505. Inspections by health authorities—enjoining actions in violation of this chapter—abatement of nuisances.

69-5506. Reports of inspections—publication by state department of health.

69-5507. Construction plans—review by state department of health.

69-5508. Sanitary operation—records—information furnished to state department of health.

69-5509. Methods of operation required to be sanitary, healthful and safe.

69-5510. Unauthorized construction or operation—public nuisance.

69-5511. Penalty for violations.

69-5501. Public policy of this state. It is the public policy of this state to regulate public swimming pools and public bathing places to protect public health.

History: En. Sec. 201, Ch. 197, L. 1967.

69-5502. Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Public swimming pool" means any artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of his family, or their invited guests;

(b) medicinal hot water baths for individual use.

(2) "Public bathing place" means a body of water and bathhouses and related appurtenances operated for the public.

(3) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

History: En. Sec. 202, Ch. 197, L. 1967.

69-5503. Sanitation—rules—adoption by state board of health. The state board of health shall adopt rules for sanitation in public swimming pools and public bathing places to protect public health.

History: En. Sec. 203, Ch. 197, L. 1967.

69-5504. Sanitation—supervision by state department of health. The state department of health shall supervise the sanitation of public swimming pools and public bathing places.

History: En. Sec. 204, Ch. 197, L. 1967.

69-5505. Inspections by health authorities—enjoining actions in violation of this chapter—abatement of nuisances. Authorized employees of the department and local boards of health may:

(1) at reasonable times inspect public swimming pools and public bathing places to determine if provisions of this chapter and rules of the state board are being violated;

(2) request an injunction from the district court to enjoin actions in violation of this chapter or rules adopted by the state board;

(3) bring actions to abate nuisances maintained in violation of this chapter in the manner provided by law for the summary abatement of other public nuisances;

(4) enforce rules adopted by the state board.

History: En. Sec. 205, Ch. 197, L. 1967.

69-5506. Reports of inspections—publication by state department of health. The department may publish reports of inspections authorized by section 205 (1) [69-5505 (1)] of this act.

History: En. Sec. 206, Ch. 197, L. 1967.

69-5507. Construction plans—review by state department of health. A person planning to construct a public swimming pool or develop a public bathing place shall submit plans to the department prior to construction. The department shall review the plans and approve or disapprove them.

History: En. Sec. 207, Ch. 197, L. 1967.

69-5508. Sanitary operation — records — information furnished to state department of health. Each person operating a public swimming pool or public bathing place shall:

(1) operate the pool or public bathing place in a sanitary and safe manner;

(2) keep records of public health and safety information required by the department;

(3) furnish information to the department on forms prescribed by it.

History: En. Sec. 208, Ch. 197, L. 1967.

69-5509. Methods of operation required to be sanitary, healthful and safe. Public swimming pools and public bathing places, including pool structures, methods of operation, source of water supply, methods of water purification, lifesaving apparatus, safety measures for bathers, and personal cleanliness measures for bathers, shall be sanitary, healthful, and safe.

History: En. Sec. 209, Ch. 197, L. 1967.

69-5510. Unauthorized construction or operation—public nuisance. The construction or operation of a public swimming pool or public bathing place contrary to the provisions of this chapter or rules adopted by the state board under the provisions of this chapter is a public nuisance and dangerous to public health.

History: En. Sec. 210, Ch. 197, L. 1967.

69-5511. Penalty for violations. A person who violates this chapter, or rules adopted by the state board under the provisions of this chapter, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500), imprisonment for not more than six (6) months, or both. Each day that a violation continues is a separate violation.

History: En. Sec. 211, Ch. 197, L. 1967.

CHAPTER 56—TOURIST CAMPGROUNDS

- Section 69-5601. "Tourist campground" defined.
- 69-5602. Rules for operation—adoption by state board of health.
- 69-5603. License from state department of health required—rules to be posted on grounds—inspections by health officers.
- 69-5604. Application for license—form and contents—license fee—duration of license.
- 69-5605. Denial of application for or revocation of license—grounds—inspection of grounds—license fees, collection and deposit.
- 69-5606. Denial of application for or revocation of license—request for hearing before the state board, notice.
- 69-5607. Violations and penalty—disposition of fines.

69-5601. "Tourist campground" defined. As used in this chapter, unless the context clearly indicates otherwise, "tourist campground" means a place used for public camping primarily by automobile tourists. The term includes places where persons can camp or secure cabins or tents, trailer courts, and similar public places.

History: En. Sec. 212, Ch. 197, L. 1967.

69-5602. Rules for operation—adoption by state board of health. The state board of health shall adopt rules for operating tourist campgrounds to insure sanitation and protect public health.

History: En. Sec. 213, Ch. 197, L. 1967.

69-5603. License from state department of health required—rules to be posted on grounds—inspections by health officers. A person operating a tourist campground shall:

- (1) obtain a license from the state department of health;
- (2) post copies of rules adopted by the state board under the provisions of this chapter in conspicuous places on the tourist campgrounds;
- (3) permit inspections by state or local health officers at all reasonable times.

History: En. Sec. 214, Ch. 197, L. 1967.

69-5604. Application for license—form and contents—license fee—duration of license. Application for a license is made to the department on forms, and containing information, required by the department. Each application shall be accompanied by a fee of five dollars (\$5). Licenses expire on December 31 of the year in which they are issued.

History: En. Sec. 215, Ch. 197, L. 1967.

69-5605. Denial of application for or revocation of license—grounds—inspection of grounds—license fees, collection and deposit. (1) The department may deny an application for a license or revoke a license that has been issued if a tourist campground does not comply with provisions of this chapter and rules adopted by the state board under provisions of this chapter.

(2) The department shall:

- (a) inspect tourist campgrounds during reasonable hours as necessary;
- (b) supervise the inspection of tourist campgrounds by local health officers, sanitarians or other authorized persons as necessary;
- (c) collect a fee of five dollars (\$5) for each license issued and deposit receipts in the state general fund.

History: En. Sec. 216, Ch. 197, L. 1967.

69-5606. Denial of application for or revocation of license—request for hearing before the state board, notice. If the department denies an application for a license or revokes a license that has been issued, an applicant or licensee is entitled to a hearing before the state board to show cause why the action should not be taken. If a hearing is desired, the applicant or licensee shall notify the executive officer of the department in writing before the sixth day after notice of the denial or revocation is received.

History: En. Sec. 217, Ch. 197, L. 1967.

69-5607. Violations and penalty—disposition of fines. A person who violates provisions of this chapter, or rules adopted by the state board under provisions of this chapter, is guilty of a misdemeanor. On conviction he shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100). Fines shall be paid to the county treasurer of the county in which the tourist campground is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund.

History: En. Sec. 218, Ch. 197, L. 1967.

Effective Date

Section 219 of Ch. 197, Laws 1967 read "Sections 212, 213, 214, 215, 216, 217, and 218 shall be effective January 1, 1968."

CHAPTER 57—GENERAL PENALTY

Section 69-5701. Violations of public health laws or rules of state board of health.

69-5701. Violations of public health laws or rules of state board of health. Anyone who violates any provision of this act, or any rule adopted by the state board under the provisions of this act, for which no penalty is specified, is guilty of a misdemeanor.

History: En. Sec. 221, Ch. 197, L. 1967.

Separability Clause

Section 222 of Ch. 197, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 223 of Ch. 197, Laws 1967 read "Sections 69-101 through 69-103, 69-105, 69-105.1, 69-105.2, 69-105.3, 69-105.4, 69-107, 69-109 through 69-127, 69-201 through

69-208, 69-301, 69-303 through 69-319, 69-401 through 69-404, 69-501 through 69-536, 69-536.1, 69-536.2, 69-537 through 69-539, 69-601 through 69-609, 69-701 through 69-712, 69-801 through 69-817, 69-901, 69-902, 69-1001 through 69-1025, 69-1122 through 69-1138, 69-1201 through 69-1220, 69-1301 through 69-1320, 69-1326 through 69-1346, 69-2001 through 69-2004, 69-2201, 69-2202, 69-2301 through 69-2310, 69-2407 through 69-2421, 69-2501 through 69-2504, 69-2601 through 69-2603, 69-2901 through 69-2918, 69-3001 through 69-3004, 69-3007 through 69-3016, 69-3016.1, 69-3017, 69-3018, 69-3101 through 69-3112, 69-3201 through 69-3210, and 69-3801 through 69-3813, R. C. M. 1947 are repealed."

CHAPTER 58—CONTROL OF IONIZING RADIATION

Section 69-5801. Declaration of policy.

69-5802. Purpose.

69-5803. Definitions.

69-5804. State radiation control agency.

69-5805. Radiation advisory committee.

69-5806. Licensing and registration of persons handling radioactive materials or equipment using such materials.

69-5807. Inspection.

69-5808. Records.

69-5809. Federal-state agreements.

69-5810. Inspection agreements and training programs.

69-5811. Conflicting laws.

69-5812. Administration procedure and judicial review.

69-5813. Prohibited uses.

69-5814. Impounding of materials.

69-5815. Exemptions.

69-5816. Penalties.

69-5801. Declaration of policy. It is the policy of the state of Montana in furtherance of its responsibility to protect the public health and safety:

(1) To institute and maintain a regulatory program for sources of ionizing radiation so as to provide for compatibility with the standards and regulatory programs of the federal government, a single, effective system of regulation within the state, and a system consistent in so far as possible with those of other states; and

(2) To institute and maintain a program to permit development and utilization of sources of ionizing radiation for peaceful purposes consistent with the health and safety of the public.

History: En. Sec. 1, Ch. 108, L. 1967.

Title of Act

An act to institute and maintain in the board of health a regulatory program

for sources of ionizing radiation; to provide for compatibility with the standards and regulatory provisions of the federal government for a single effective system

of registration of persons handling radioactive materials or equipment using such materials; setting forth penalties for non-compliance.

69-5802. Purpose. It is the purpose of this act to provide:

(1) A program of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the federal government and the state and facilitate inter-governmental co-operation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to by-product, source, and special nuclear materials; and

(4) A program to permit maximum utilization of sources of ionizing radiation consistent with the health and safety of the public.

History: En. Sec. 2, Ch. 108, L. 1967.

69-5803. Definitions. (1) By-product material means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) Ionizing radiation means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons and other nuclear particles but not sound or radio waves or visible, infrared or ultra-violet light.

(3) General license means a license effective pursuant to regulations promulgated by the board of health without the filing of an application to transfer, acquire, own, possess or use quantities of or devices or equipment utilizing quantities of by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the board of health or the issuing of licensing documents to the user.

(4) Specific license means a license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own or possess quantities of, or devices or equipment utilizing quantities of by-product, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(5) Person means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States atomic energy commission, any successor thereto, or federal agencies licensed by the atomic energy commission.

(6) Source material means uranium, thorium or any other material which the board of health or the United States atomic energy commission declares by order to be source material or ores containing one (1) or

more of the foregoing materials, in such concentration as the board of health or the atomic energy commission declares by order to be source material after the atomic energy commission has determined the material in such concentration to be source material.

(7) Special nuclear material means plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the board of health or the United States atomic energy commission, or any successor thereto declares by order to be special nuclear material or any material artificially enriched by any of the foregoing, but does not include source material.

(8) Registration means the registering by the legal owner, user or authorized representative with the board of health in the manner prescribed by rule or regulation of sources of ionizing radiation.

History: En. Sec. 3, Ch. 108, L. 1967.

69-5804. State radiation control agency. (1) The board of health is hereby designated as the state radiation control agency.

(2) In accordance with the laws of the state of Montana, the board of health may employ, compensate and prescribe the powers and duties of such individuals as may be necessary to carry out the provisions of this act.

(3) The board of health may for the protection of the occupational and public health and safety:

(a) Develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation;

(b) Develop programs and formulate, adopt, promulgate, and repeal rules and regulations with due regard for compatibility with federal programs for licensing and regulation of by-product, source, radioactive waste materials and special nuclear materials and other radioactive materials. These rules and regulations shall cover equipment and facilities, methods for transporting, handling and storage of radioactive materials, permissible levels of exposure, technical qualifications of personnel, required notification of accidents and other incidents involving radioactive materials, survey methods and results, methods of disposal of radioactive materials, posting and labeling of areas and sources and methods and effectiveness of controlling individuals in posted and restricted areas;

(c) Formulate, adopt, promulgate and repeal rules and regulations relating to control of other sources of ionizing radiation. These rules and regulations shall cover equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys and records;

(d) Issue such orders or modifications thereof as may be necessary in connection with proceedings under section 5 [69-5805] of this act;

(e) Advise, consult and co-operate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions and with groups concerned with control of sources of ionizing radiation;

(f) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its func-

tions, from the federal government and from other sources, public or private;

(g) Encourage, participate in, or conduct studies, investigations, training, research and demonstrations, relating to control of sources of ionizing radiation;

(h) Collect and disseminate information relating to control of sources of ionizing radiation, including:

1. Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations;
2. Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this act and any administrative or judicial action pertaining thereto;
3. Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated and proceedings thereon.

History: En. Sec. 4, Ch. 108, L. 1967.

69-5805. Radiation advisory committee. The board of health shall appoint a radiation advisory committee of five (5) members who represent interested groups in the state. Members of the committee shall serve at the discretion of the board of health and shall be reimbursed for necessary and actual expense incurred in attendance at meetings or for authorized business of the board of health. The committee shall furnish such technical advice as may be required on matters relating to the radiation control program.

History: En. Sec. 5, Ch. 108, L. 1967.

69-5806. Licensing and registration of persons handling radioactive materials or equipment using such materials. (1) The board of health shall provide by rule or regulation for general or specific licensing of persons to receive, possess, or transfer radioactive materials and devices or equipment utilizing such materials. Such rules or regulations shall provide for amendment, suspension, or revocation of licenses pursuant to section 11 [69-5811] of this act;

(2) Each application for a specific license shall be in writing and shall state such information as the board of health by rule or regulation may determine to be necessary to decide the technical, insurance and financial qualifications or any other qualification of the applicant as the board of health may deem reasonable and necessary to protect the occupational and public health and safety. The board of health may at any time after the filing of the application and before the expiration of the license, require further written statements and may make such inspections as the board of health may deem necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended or revoked. All applications and statements shall be signed by the applicant or licensee. The board of health may require any applications or statements to be made under oath or affirmation;

(3) Each license shall be in such form and contain such terms and conditions as the board of health may by rule or regulation prescribe;

(4) No license issued pursuant to the provisions of this act and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of;

(5) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations or orders issued in accordance with the provisions of this act;

(6) The board of health may require registration and inspection of persons dealing with sources of ionizing radiation which do not require a specific license and may require compliance with specific safety standards to be promulgated by the board of health;

(7) The board of health is authorized to exempt certain users from the licensing or registration requirements set forth in this section when the board of health makes a finding that the exemption of such users will not constitute a significant risk to the health and safety of the public;

(8) Any report of investigation or inspection, or any information concerning trade secrets or secret industrial processes obtained under this act shall not be disclosed or opened to public inspection except as may be necessary for the performance of the functions of the board of health;

(9) Rules and regulations promulgated pursuant to this act may provide for recognition of other state or federal licenses as the board of health may deem desirable, subject to such registration requirements as the board of health may prescribe.

History: En. Sec. 6, Ch. 108, L. 1967.

69-5807. Inspection. The board of health or its duly authorized representatives shall have the power to enter at all reasonable times upon any private or public property within the jurisdiction of the board of health, other than a private dwelling, for the purpose of determining whether or not there is compliance with or violation of the provisions of this act and rules and regulations promulgated thereunder, and the owner, occupant, or person in charge of such property shall permit such entry and inspection. Entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

History: En. Sec. 7, Ch. 108, L. 1967.

69-5808. Records. (1) The board of health shall require each person who acquires, possesses or uses a source of ionizing radiation to maintain records relating to its receipt, storage, transfer, or disposal and such other records as the board of health may require, subject to such exemptions as may be provided by rules and regulations;

(2) The board of health shall require each person who acquires, possesses, or uses a source of ionizing radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules and regulations of the board of health. Copies of these records and those required to be kept by sub-

section (1) of this section shall be submitted to the board of health on request;

(3) The board of health shall adopt reasonable regulations, compatible with those of the United States atomic energy commission, or the national committee on radiation protection, pertaining to reports of exposure of personnel to radiation. Such regulations shall require that reports of excessive exposure be made to the individual exposed and to the board of health, and shall make provision for periodic and terminal reports to individuals for whom personnel monitoring is required;

(4) The provisions of this act shall not be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.

History: En. Sec. 8, Ch. 108, L. 1967.

69-5809. Federal-state agreements. (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state;

(2) Any person who, on the effective date of an agreement under subsection (1) of this section, possesses a license issued by the federal government shall be deemed to possess the same pursuant to this act, which shall expire either ninety (90) days after receipt from the board of health of a notice of expiration of such license, or on the date of expiration specified in the federal license, whichever is earlier.

History: En. Sec. 9, Ch. 108, L. 1967.

69-5810. Inspection agreements and training programs. (1) The board of health on behalf of the state of Montana may enter into an agreement or agreements with the federal government, other states or interstate agencies, whereby this state shall perform on a co-operative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation;

(2) The board of health and any other appropriate state agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this act and may make said personnel available for participation in any program or programs of the federal government, other states or interstate agencies in furtherance of the purposes of this act.

History: En. Sec. 10, Ch. 108, L. 1967.

69-5811. Conflicting laws. Ordinances, resolutions or regulations now or hereafter in effect of the governing body of a municipality or county relating to by-product, source and special nuclear materials shall not be superseded by this act; provided, that such ordinances or regulations are and shall continue to be consistent with the provisions of this act, amendments thereto, and rules and regulations thereunder.

History: En. Sec. 11, Ch. 108, L. 1967.

69-5812. Administration procedure and judicial review. (1) In any proceeding under this act for granting, suspending, revoking or amending any license, or for determining compliance with, or granting exceptions from, rules and regulations promulgated in accordance with this chapter, the board of health shall first afford an opportunity for a hearing on the record upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding;

(2) Whenever the board of health finds that an emergency exists requiring immediate action to protect the public health and safety, the board of health may, without notice or hearing, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is deemed necessary to meet the emergency. Notwithstanding any provision of this act to the contrary, such regulation or order shall become effective immediately. Any person to whom such regulation or order is directed shall comply therewith immediately, but on application to the board of health, shall be afforded a hearing promptly after application has been made. On the basis of such a hearing the emergency regulation or order shall be continued, modified, or revoked within thirty (30) days after such hearing or when the emergency no longer exists.

History: En. Sec. 12, Ch. 108, L. 1967.

69-5813. Prohibited uses. It shall be unlawful for any person to use, manufacture, produce, or knowingly transport, transfer, receive, acquire, own or possess any source of ionizing radiation unless such person is licensed by or registered with the board of health in accordance with the provisions of this act, rules and regulations issued hereunder.

History: En. Sec. 13, Ch. 108, L. 1967.

69-5814. Impounding of materials. The board of health shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation, in the possession of any person who is not equipped to observe or who fails to observe the provisions of this act or any rules or regulation promulgated thereunder.

History: En. Sec. 14, Ch. 108, L. 1967.

69-5815. Exemptions. This act shall not apply to the following sources or conditions:

(1) Electrical equipment that is not intended primarily to produce radiation, and that, by nature of design, does not produce radiation at the point of nearest approach at a weekly rate higher than one-tenth (1/10) the appropriate limit for any critical organ exposed. The production testing or production servicing of such equipment shall not be exempt;

(2) Radiation machines during process of manufacture, or in storage or transit;

(3) Any radioactive material while being transported in conformity with regulations adopted by the atomic energy commission, or any successor thereto, or the interstate commerce commission, and specifically applicable to the transportation of such radioactive materials;

(4) No exemptions under this section are granted for those quantities or types of activities which do not comply with the established rules and regulations promulgated by the atomic energy commission, or by any successor thereto.

History: En. Sec. 15, Ch. 108, L. 1967.

69-5816. Penalties. No person shall acquire, own, possess or use any radioactive by-product material, source material, special nuclear materials or other radioactive materials occurring naturally or produced artificially, without having been granted a license therefor from the board of health or transfer to another or dispose of said materials without first having been granted approval of the board of health therefor, in accordance with the administrative rules and regulations of the board of health.

Any person who violates this section is guilty of a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000), or by confinement in the county jail of not less than thirty (30) days and not more than ninety (90) days, or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 108, L. 1967.

Repealing Clause

Section 17 of Ch. 108, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 59—WATER TREATMENT PLANTS AND DISTRIBUTION SYSTEMS

- Section 69-5901. Legislative findings—policy of state.
 69-5902. Definitions.
 69-5903. Board of certification to assist director—composition—terms of members—meetings and organization—examination of candidates for certification.
 69-5904. Classification of treatment plants and distribution systems.
 69-5905. Certification of operators by director.
 69-5906. Operator of treatment plant or distribution system to be certified—certification of operators previously in charge or certified by other agency.
 69-5907. Issuance of operators' certificates—display—annual renewal—revocation—termination of employment—reinstatement of certificate.
 69-5908. Application for operator's certificate—payment of fee—use of proceeds.
 69-5909. Term of operator's certificate—renewal fee—suspension and revocation—reinstatement.
 69-5910. Rules and regulations of board.
 69-5911. Unlawful to operate treatment plant or distribution system without certified operator.
 69-5912. Violation a misdemeanor—each day as separate offense.

69-5901. Legislative findings—policy of state. It is hereby found and declared that the health and welfare of Montana citizens are jeopardized by persons not properly qualified to operate the water supply systems and that Montana's waters are endangered by persons not properly qualified to operate the waste water treatment plants. It is declared the public policy of this state to control by certifying those persons working in these occupations in order to protect the public health and safety.

History: En. Sec. 1, Ch. 239, L. 1967.

Title of Act

An act to protect the public health and to conserve and protect the water resources of the state, to provide for the classification of all public and privately owned water supply systems and all public and privately owned waste water treatment plants, to require the examina-

tion and certification of the competency of operators, to supervise the operation of water supply systems and waste water plants, to prescribe the powers and duties of the state board of health, to provide for the promulgation of rules and regulations, to provide a board of certification, and to prescribe penalties for the violation of this act.

69-5902. **Definitions.** As used in this act, unless the context clearly indicates otherwise:

(1) "Board" means the board of certification for water and waste water operators.

(2) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system or waste water treatment plant. Operators of plants or systems serving less than ten (10) families are excluded from this act.

(3) "Director" means the director of the division of environmental sanitation of the Montana state board of health.

(4) "Waste water treatment plant" means facilities designed to remove solids, bacteria or other harmful constituents of sewage, industrial wastes or other wastes and which discharges an effluent directly into Montana's waters at any time during the year and which serves ten (10) or more families or serves an industry employing ten (10) or more persons.

(5) "Water supply system" means the system of pipes, structures and facilities through which the water is obtained, treated, sold, distributed or otherwise offered to the public for household use or any use by humans and shall serve ten (10) or more families or shall serve an industry employing ten (10) or more persons.

(6) "Water treatment plant" means that portion of the water supply system which in some way alters either the physical, chemical or bacteriological quality of the water rendering it safe and palatable for human use.

(7) "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply source to the premises of the consumer and which serves ten (10) or more families or supplies an industry employing ten (10) or more persons.

(8) "Certificate" means a certificate of competency issued by the director stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(9) "Montana's waters" means all streams and lakes, including all rivers and lakes bordering on the state, wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.

History: En. Sec. 2, Ch. 239, L. 1967.

69-5903. Board of certification to assist director—composition—terms of members—meetings and organization—examination of candidates for certification. (1) The governor of the state of Montana shall appoint a board of certification to advise and assist the director in the administration of the certification program. The board shall be composed of seven (7) persons as follows:

(a) Two (2) members who are currently employed water supply system or water treatment plant operators holding valid certificates or receiving certificates within one (1) year from the date of initiation of this program. One (1) of these members is required to hold, or receive within one (1) year from the date of initiation of this program, a certificate by examination of the highest class issued by the board. There is no restriction on the classification of the certificate held by the other operator.

(b) Two (2) members who are currently employed waste water treatment plant operators holding valid certificates or receiving certificates within one (1) year from the date of initiation of this program. One (1) of these members is required to hold, or receive within one (1) year from the date of initiation of this program, a certificate by examination of the highest class issued by the board. There is no restriction on the classification of the certificate held by the other operator.

(c) One (1) member presently serving on the faculty of a university or college whose major field is related to water supply systems, waste water treatment, chemical or civil engineering, chemistry or bacteriology.

(d) One (1) member who is a representative of a municipality required to employ a certified operator and who holds a position of either city manager, city engineer, director of public works, works manager, or their equivalent.

(e) The director of the division of environmental sanitation or a qualified member of his staff to be appointed by the director.

(2) Each member of the board, with the exception of the ex officio voting member from the state board of health, shall be appointed for a six (6) year term except in the case of the initial appointments the municipal representative shall be appointed for one (1) year, the faculty member shall be appointed for two (2) years, and the water and waste water operators shall be appointed for three (3), four (4), five (5) and six (6) years setting forth in the appointment the term in the beginning. Vacancies shall be filled by appointment by the governor for the unexpired term. The director shall be the only permanent member of the board.

(3) Members of the first board shall at the call of the director, organize and elect from their number a chairman. Thereafter, annually when new members are appointed to the board a chairman shall be elected at the next board meeting. The director shall be the secretary to the board.

(4) The board shall hold at least one (1) examination each year for the purpose of examining candidates for certification at a time and place designated by the board. Those applicants whose competency is accept-

able to the board shall be recommended to the director for certification. Additional meetings may be called by the chairman, secretary, or upon written request of four (4) members of the board as may be reasonably necessary to carry out the provisions of this act. Four (4) members shall constitute a quorum. The members of the board shall receive a fee of twenty dollars (\$20) per day while in session, plus the cost of actual and necessary expenses, including travel while discharging their official duties.

History: En. Sec. 3, Ch. 239, L. 1967.

69-5904. Classification of treatment plants and distribution systems.

The director shall classify all water treatment plants, water distribution systems and waste water treatment plants with due regard to the size, type, physical conditions affecting such water treatment plants and distribution systems, character of waste waters to be treated and other physical conditions affecting such waste treatment plants and according to the skill, knowledge, and experience that the operator in responsible charge must have, to successfully supervise the operation of such water treatment plants and water distribution systems and such waste water treatment facilities so as to protect the public health and prevent unlawful pollution.

History: En. Sec. 4, Ch. 239, L. 1967.

69-5905. Certification of operators by director. The director shall certify persons as to their qualifications to supervise successfully the operation of such water and waste water treatment plants and the water distribution systems after considering the recommendations of the board.

History: En. Sec. 5, Ch. 239, L. 1967.

69-5906. Operator of treatment plant or distribution system to be certified—certification of operators previously in charge or certified by other agency. One (1) year following the effective date of this act, all water and waste water treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the director in a grade corresponding to the classification of that portion of the water or waste water supply system to be supervised; provided, however, that nothing herein contained shall prevent a governmental agency, corporation, or individual from continuing to employ in such capacity any person now in responsible charge of the operation of such works. Certificates of proper classification may be issued without examination to the person or persons certified by the governing board or owner to have been in responsible charge of the water and waste water plants and water distribution systems on the effective date of the act. A certificate so issued will be valid only in that plant. The board may consider for recommendation for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state, upon presentation to the board of satisfactory evidence that the applicant is in responsible charge of works located in Montana requiring a certified operator and that he has successfully

passed an examination at least equivalent to that required under section 3(4) and section 5 [69-5903(4) and 69-5905] of this act.

History: En. Sec. 6, Ch. 239, L. 1967.

69-5907. Issuance of operators' certificates—display—annual renewal—revocation—termination of employment—reinstatement of certificate. The director shall issue certificates attesting to the competency of operators. The certificates shall include the classification of the works which the operator is qualified to supervise. The certificate shall be prominently displayed in the office of the operator.

(1) Certificates shall continue in effect unless revoked by the director, but remain the property of the board and the certificate shall so state. Each certificate shall be renewed annually by payment of proper fee.

(2) The director may revoke the certificate of an operator following a hearing before the director or his designated representative, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to properly perform his duties. Any person having his certificate revoked by the director may appeal to the certification board for a rehearing within ten (10) days of notification by the director, after which time the revocation proceedings are no longer applicable and revocation of the certificate becomes final.

(3) Operators who terminate employment may retain their certificate for two (2) years, providing that all other requirements are met. After two (2) years, a certificate will automatically be invalidated. Operators whose certificates are invalidated under the provisions of this act may be issued new certificates of like classification provided appropriate proof of competency is presented to the board. Successful completion of an examination may be required at the discretion of the board.

History: En. Sec. 7, Ch. 239, L. 1967.

69-5908. Application for operator's certificate—payment of fee—use of proceeds. Any person desiring to engage in the operation of a water treatment plant, water distribution system or waste water treatment plant shall first file an application with the board for a proper certificate. The board shall charge a fee of the same amount as the license cost set forth in section 9 [69-5909], for the filing of each application by any person and shall not act upon any application until such fee has been paid. All filing and certification fees collected hereunder shall be deposited with the state treasurer in the "Water and Waste Water Operators Certification Examining Board Account" in the earmarked revenue fund and shall be used to pay the expenses of the board as set forth in this act and for no other purpose. In the granting of such certificates, the board shall have due regard for the interest of the state of Montana to protect the drinking water supplies and the quality of its waters.

History: En. Sec. 8, Ch. 239, L. 1967.

69-5909. Term of operator's certificate—renewal fee—suspension and revocation—reinstatement. The terms for certificates issued under the

provisions of this act shall be from the first day of July of each year through the following 30th day of June. After the payment of the initial fee as provided for in the immediate preceding section, each certificate holder hereunder shall pay on or before the first day of each certificate year a renewal fee as set forth in the schedule below:

Class I —twenty dollars (\$20)

Class II —fifteen dollars (\$15)

Class III—ten dollars (\$10)

Class IV—five dollars (\$5)

Class V —three dollars (\$3)

Any certificate issued after July 1st of the calendar year shall expire the following June 30th. If a certificate holder does not apply for a renewal of his certificate before the first day of any certificate year and remit to the board the necessary renewal fee, he shall have his certificate suspended by the board. If said certificate remains so suspended for a period of more than thirty (30) days after the first of any certificate year, it shall be revoked by the board; provided, however, that the board prior to such revocation shall notify the certificate holder by certified mail to the address on the issued certificate of its intention to revoke, at least ten (10) days prior to the time set for action to be taken by the board on such certificate. A certificate once revoked may not be reinstated unless it shall appear that an injustice has occurred through error or omission or other fact or circumstances indicating to the board that the certificate holder was not guilty of negligence or laches. If a person whose certificate has been revoked through his own fault desires to continue as a water or waste water plant operator, he must make application to the board as provided for in section 8 [69-5908] of this act. Successful completion of an examination may be required at the discretion of the board. Notice of suspension shall be given to certificate holder when such suspension occurs and to the proper official or owner of such treatment works or distribution system.

History: En. Sec. 9, Ch. 239, L. 1967.

69-5910. Rules and regulations of board. The board shall make such rules and regulations as are reasonably necessary to carry out the intent of this act. The rules and regulations shall include, but are not limited to, provisions establishing the basis for classification of treatment plants in accordance with section 4 [69-5904] of this act, provisions establishing qualifications of applicants, procedures for examination of candidates and such other provisions as are necessary for the administration of this act.

History: En. Sec. 10, Ch. 239, L. 1967.

69-5911. Unlawful to operate treatment plant or distribution system without certified operator. On or after one (1) year following the effective date of this act, it shall be unlawful for any person, firm or corporation both municipal and private, operating a waste water treatment plant, water treatment plant or water distribution system to operate same

unless the competency of the operator is duly certified to by the director under the provisions of this act. Furthermore, it shall be unlawful for any person to perform the duties of an operator as defined herein without being duly certified under the provisions of this act.

History: En. Sec. 11, Ch. 239, L. 1967.

69-5912. Violation a misdemeanor—each day as separate offense. Any person, firm, or corporation, both municipal and private, violating any provisions of this act or the rules and regulations adopted hereunder is guilty of a misdemeanor. Each day of operation in violation of this act or any rules and regulations adopted hereunder shall constitute a separate offense.

History: En. Sec. 12, Ch. 239, L. 1967.

Separability Clause

Section 13 of Ch. 239, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all

valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are separable from the invalid applications."

CHAPTER 60—REFUSE DISPOSAL DISTRICTS

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| Section 69-6001. | Declaration of purpose. |
| 69-6002. | Definitions. |
| 69-6003. | Creation of district authorized—cities and towns included—resolution of intention. |
| 69-6004. | Action by city or town council—effect—notice. |
| 69-6005. | Written protest—hearing—effect. |
| 69-6006. | Jurisdiction to order improvements—passage of resolution—brief description and reference. |
| 69-6007. | Service fees—maintenance assessments—disposal fee. |
| 69-6008. | Installment payments for land and equipment—moneys from fee levy. |
| 69-6009. | Board of directors—composition. |
| 69-6010. | Powers of board. |
| 69-6011. | Changes in boundaries. |

69-6001. Declaration of purpose. The improper storage, collection and disposal of refuse is hereby declared to be a significant hazard to the health, safety and welfare of Montana citizens and can cause the spread of disease, air pollution and water pollution. Refuse can be an excellent habitat for disease vectors such as rats and insects; therefore, it is deemed necessary to provide for the creation of refuse disposal districts to control storage, collection and disposal of refuse.

History: En. Sec. 1, Ch. 71, L. 1969.

Title of Act

An act permitting establishment of refuse disposal districts by boards of county commissioners; defining terms; establishing conditions for creating refuse disposal

districts; providing for inclusions or exclusions of cities and towns; allowing for protest of creation; establishing fee schedules; providing for board of directors and their duties; and allowing for changing of boundaries; and specifying an effective date.

69-6002. Definitions. As used in this act unless the context indicates otherwise:

"Commissioners" means the board of county commissioners.

"Family residential unit" means the residence of a single family.

"Refuse" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

"Refuse disposal district" means an area established with definite boundaries for the purpose of collecting and disposing of all refuse created in said district.

History: En. Sec. 2, Ch. 71, L. 1969.

69-6003. Creation of district authorized—cities and towns included—resolution of intention. Whenever it becomes necessary, the commissioners may create a refuse disposal district for the purpose of collection and/or disposal of refuse.

Cities and towns may be included in the district if approved by the city and town councils.

Before creating any refuse disposal district, the commissioners shall pass a resolution of intention so to do, which said resolution shall designate:

- (1) the proposed name of such district,
- (2) the necessity for the proposed district,
- (3) a general description of the territory or lands of said district giving the boundaries thereof,
- (4) the general character of the collection service,
- (5) the estimated cost thereof.

History: En. Sec. 3, Ch. 71, L. 1969.

69-6004. Action by city or town council—effect—notice. Upon passage of such resolution of intention, commissioners shall transmit a copy of the same to the executive head of any incorporated city or town within the proposed district for consideration by such city or town council, and if the city or town council shall by resolution concur, in the resolution of the commissioners, a copy of the resolution of concurrence shall be transmitted to the commissioners. If the incorporated city or town council does not concur in the resolution of the commissioners, the commissioners shall have no authority to include said town or city in the district, but may continue to develop the district, but excluding said town or city. However, if the city or town council concurs in the resolution of the commissioners, the commissioners must give notice of the passage of its resolution of intention and of the concurrence therein by the city or town council, which notice must be published for ten (10) consecutive days in a daily newspaper or in two (2) issues of a weekly newspaper published nearest to the place where such refuse disposal district is to be created and shall also cause to be posted within the boundaries of such special refuse district a copy of such notice in three (3) public places. Such notice must describe the general characteristic of the collection system with the estimated costs and designate the time when and the place where the commissioners will hear and pass upon all protests that may be made against the maintenance and operation

of said district and the said notice is referred to the resolution on file in the office of the county clerk for the description of the boundaries.

History: En. Sec. 4, Ch. 71, L. 1969.

69-6005. Written protest — hearing — effect. At any time within thirty (30) days after the date of the first publication of the passage of the resolution of intention, any owner of property liable to be assessed for said service may make written protest against the proposed service. Such protest must be in writing and be delivered to the county clerk, who shall endorse thereon the date of the receipt by him. At the next regular meeting of the commissioners, after the expiration of the time within such said protest may be so made, the commissioners shall proceed to hear and pass upon all protests so made, and its decision shall be final and conclusive; provided, however, if the protest against the proposed service is made by the owners of more than fifty (50) per cent of the family residential units; each commercial and industrial service that is to be included in the collection system may be considered as a family residential unit for the purpose of determining per cent of protest; in the proposed district, no further proceedings shall be taken by the commissioners.

In determining whether or not sufficient protests have been filed in the proposed district to prevent further proceedings therein, property owned by the city, county, and school districts, shall be considered the same as any other property in the district. The commissioners may include commercial and industrial establishments in said district. The commissioners may adjourn said hearings from time to time.

History: En. Sec. 5, Ch. 71, L. 1969.

69-6006. Jurisdiction to order improvements—passage of resolution —brief description and reference. When no protests have been delivered to the county clerk within thirty (30) days after the date of the first publication of the notice of the passing of the resolution of intention, or when a protest shall have been found by said commissioners to be insufficient, or shall have been overruled, immediately thereupon, the commissioners shall be deemed to have acquired jurisdiction to order improvements, but before ordering any of the said proposed improvements, the commissioners shall pass a resolution creating the said refuse disposal district in accordance with the resolution of intention theretofore introduced and passed by the commissioners.

In all resolutions, notices, orders, and determinations subsequent to the resolution of intention and notice of improvement, it shall be sufficient to briefly describe the work of the refuse disposal district and to refer to the resolution of intention for further particulars.

History: En. Sec. 6, Ch. 71, L. 1969.

69-6007. Service fees—maintenance assessments—disposal fee. To defray the cost of maintenance and operation of said refuse disposal district, the commissioners shall establish a fee for service. The commis-

sioners shall assess the entire cost of maintenance and operation of said district on each family residential unit that is receiving this service. Fees for commercial and industrial accounts shall be based on a comparison with a typical residential unit as to volume and type of waste produced. However, in no case shall the fee for disposal service only exceed one half ($\frac{1}{2}$) the total fee for both collection and disposal services.

History: En. Sec. 7, Ch. 71, L. 1969.

69-6008. Installment payments for land and equipment — moneys from fee levy. To defray the initial cost of purchasing land and equipment, payments may be spread over a term of not to exceed twenty (20) years. Payments are to be made in equal installments out of the moneys received from the fee levy provided for in this act.

History: En. Sec. 8, Ch. 71, L. 1969.

69-6009. Board of directors—composition. Upon creation of any refuse disposal district, the commissioners shall appoint a board of directors for the proposed refuse disposal district. The board shall consist of not less than five (5) members, each of whom shall be property owners in the said district. The board shall consist of one (1) county commissioner, one (1) member from each incorporated city or town that is included in the district, one (1) member of the county or city-county board of health. The rest of the board shall consist of interested citizens distributed equally throughout the district. In those counties where full-time city-county health departments exist, the city-county board of health may be designated as the board of directors for the refuse disposal district.

History: En. Sec. 9, Ch. 71, L. 1969.

69-6010. Powers of board. The board of directors for the refuse disposal district shall have power:

(1) To develop and administer a program for the collection and/or disposal of refuse within the district.

(2) To employ such suitable and competent assistants and employees as may be necessary and provide for their compensation.

(3) To purchase, rent or execute leasing agreements for such equipment and material as they may determine to be necessary for carrying on an effective refuse collection and/or disposal program.

(4) To co-operate with any corporation, association, individual or group of individuals, including any agency of the federal or state government, in order to carry on an effective program.

(5) To receive gifts, grants, or donations for the purpose of advancing the program.

(6) To enforce all state or local board of health rules and regulations pertaining to the storage, collection and disposal of refuse.

(7) To apply for and receive from the federal government on behalf of said refuse disposal district any moneys that may be appropriated by congress for aiding such programs.

(8) To borrow from the federal government any funds available for assistance in planning or financing a refuse disposal district and repay the same with the moneys received from the fee levy provided for in this act.

History: En. Sec. 10, Ch. 71, L. 1969.

69-6011. Changes in boundaries. The governing body of the district may by resolution make such changes in the boundaries of said district as they shall deem reasonable and proper, following the same procedures of notice and hearings outlined under section 6 [69-6006] of this act.

History: En. Sec. 11, Ch. 71, L. 1969.

Effective Date

Section 13 of Ch. 71, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

Repealing Clause

Section 12 of Ch. 71, Laws 1969 read "All acts and parts of acts in conflict herewith are repealed except that section 69-4001 through 69-4010, R. C. M. 1947, shall in no way be affected by this act."

CHAPTER 61—CONSENT BY MINORS TO MEDICAL
OR SURGICAL CARE

- Section 69-6101. Consent of minor who is, or professes to be, married, pregnant or afflicted with venereal disease valid—not subject to disaffirmance—consent of no other person necessary.
- 69-6102. Divulgence of information by physician.
- 69-6103. Act applicable even if minor's suspicions of pregnancy or venereal disease not subsequently substantiated.
- 69-6104. Consent to surgery not directly connected with pregnancy not included.
- 69-6105. Immunity of hospital, public clinic or physician.

69-6101. Consent of minor who is, or professes to be, married, pregnant or afflicted with venereal disease valid—not subject to disaffirmance—consent of no other person necessary. The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician, licensed to practice medicine in this state, when executed by a minor who is, or professes to be married, or by a female minor who is, or professes to be pregnant, or by a minor who is, or professes to be afflicted with a venereal disease, shall be valid and binding as if the said minor had achieved his or her majority as the case may be; that is, a minor who is, or professes to be married, or a female minor who is, or professes to be pregnant, or a minor who is, or professes to be afflicted with a venereal disease, shall be deemed to have, and shall have the same legal capacity to act, and the same legal obligations with regard to the giving of such consent to such hospital or clinical care or services or medical or surgical care or services to be provided by a physician licensed to practice medicine in this state, as a person of full legal age and capacity, the infancy of said minor and any contrary provisions of law notwithstanding, and such consent shall not be subject to later disaffirmance by reason of such minority; and the consent of no

other person or persons (including, but not limited to a spouse, parent, custodian, or guardian) shall be necessary in order to authorize such hospital or clinical care or services or medical or surgical care or services to be provided by a physician licensed to practice medicine in this state to such a minor or minor's child.

History: En. Sec. 1, Ch. 189, L. 1969.

Title of Act

An act providing that minors may give legal consent to hospitals, public clinics or physicians for diagnosis and treatment for pregnancy or venereal disease; that such consent shall be binding on the minor and not subject to later disaffirmance by reason of such minority; that the consent of no other person shall be necessary in order to authorize care or services provided to such minor or minor's child; that the physician or physicians may, in their sole discretion, give or withhold information concerning facts that minor patients are pregnant or have venereal disease; that no information shall be given by hospitals, public clinics or physicians to any spouse,

parent, custodian or guardian of any minor patient in cases where said minor patient is found not to be pregnant or not afflicted with venereal disease; that act applies to minors who profess to be in need of medical services whether their suspicions of pregnancy or venereal disease are subsequently medically substantiated; providing that any consent given by a minor under this act following delivery or other termination of pregnancy shall not include consent to any surgery not directly connected with the pregnancy, providing that hospitals, public clinics and physicians who provide care or services under the terms of this act shall incur no civil or criminal liability, except that such immunity shall not apply to negligent acts or omissions.

69-6102. Divulgence of information by physician. A treating physician or if more than one, any one of them, may, but shall not be obligated to, inform the spouse, parent, custodian or guardian of any such minor in the circumstances as enumerated in section 1 [69-6101] of this act, as to the treatment given or needed, and such information may be given to, or withheld from, the spouse, parent, custodian or guardian without the consent of the minor patient and even over the express refusal of the minor patient providing such information; the providing or withholding of such information to rest in the sole discretion of the physician. In the event that the said minor is found not to be pregnant or not afflicted with venereal disease, then no information with respect to any appointment, examination, test or other medical procedure shall be given to the spouse, parent, custodian, or guardian of said minor.

History: En. Sec. 2, Ch. 189, L. 1969.

69-6103. Act applicable even if minor's suspicions of pregnancy or venereal disease not subsequently substantiated. The provisions of this act shall also apply to minors who profess to be in need of hospital or clinical care or services or medical or surgical care or services to be provided by a physician licensed to practice medicine in this state, whether because of suspected pregnancy or venereal disease, regardless of whether such professed suspicions of pregnancy or venereal disease are, or are not subsequently substantiated on a medical basis.

History: En. Sec. 3, Ch. 189, L. 1969.

69-6104. Consent to surgery not directly connected with pregnancy not included. Any consent given pursuant to the provisions of this

act by a minor shall not be deemed to be valid if, following a delivery or other termination of a pregnancy, it is determined that surgery not directly connected with the pregnancy is required or shall be requested.

History: En. Sec. 4, Ch. 189, L. 1969.

69-6105. Immunity of hospital, public clinic or physician. In any case arising under the provisions of this act the hospital, public clinic, or physician, licensed to practice medicine in this state, who provides the care or services or who performs medical or surgical care or services shall incur no civil or criminal liability by reason of having provided the care or services, but such immunity shall not apply to any negligent acts or omissions.

History: En. Sec. 5, Ch. 189, L. 1969.

CHAPTER 62—ALCOHOL AND DRUG DEPENDENCE

- Section 69-6201. Purpose and intent of act—policy of state.
 69-6202. Commission on alcohol and drug dependence—composition—appointment and removal of members—per diem and expenses—officers—meetings.
 69-6203. Duties of commission—department authorized to accept gifts—enter into contracts—acquire and dispose of property.
 69-6204. Receipt of financial assistance authorized—co-operation with other agencies and organizations—grants to other agencies and organizations.
 69-6205. Department to administer act.
 69-6206. State and local government to co-operate with department—not subject to its control.
 69-6207. Deposit of funds from federal or private sources with state treasurer.

69-6201. Purpose and intent of act—policy of state. It is the purpose of this act and the policy of this state to recognize alcohol and drug dependence as problems affecting the health, safety, morals, economy, and general welfare of this state; to recognize alcohol and drug dependence as problems subject to treatment; and to recognize the sufferer of alcohol, drug dependence, or both, as worthy of treatment and rehabilitation. It is the intent of this act to establish means whereby the appropriate resources of this state may be focused fully and effectively upon the problems of alcohol and drug dependence and utilized in implementing programs for the control and treatment of these problems.

History: En. Sec. 1, Ch. 303, L. 1969.

Title of Act

An act to establish the Montana commission on alcohol and drug dependence within the department of health.

69-6202. Commission on alcohol and drug dependence—composition—appointment and removal of members—per diem and expenses—officers—meetings. (1) There is a Montana commission on alcohol and drug dependence hereafter called “the commission” in the state department of health hereinafter referred to as “the department.” The commission shall consist of fourteen (14) members as follows:

(a) Seven (7) members appointed by the governor, with the advice and consent of the senate, from citizens of the state who are known to

have knowledge and interest in the subject of alcohol and drug dependence. Three (3) members shall be appointed from each congressional district in the state, and one (1) member shall be appointed from the state at large;

(b) Seven (7) ex officio members, or persons named by them, as follows:

- (i) the executive officer of the department of health,
- (ii) the supervisor of the division of mental hygiene,
- (iii) the state administrator of public welfare,
- (iv) the director of the department of institutions,
- (v) the highway patrol chief,
- (vi) the superintendent of public instruction,
- (vii) the director of the division of vocational rehabilitation.

(2) Initial appointments shall be made within thirty (30) days after this act becomes effective, and the governor shall designate two (2) members who serve for a term of two (2) years, two (2) members who serve for a term of four (4) years, and three (3) members who serve for a term of six (6) years. After initial appointments, appointed members shall serve for a term of six (6) years. Appointments to fill vacancies shall be made by the governor for the unexpired term in the same manner as other appointments.

(3) Appointed members of the commission may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office.

(4) Appointed members of the commission shall receive per diem at twenty-five dollars (\$25) for each day they are actually engaged in the transaction of business for the commission and shall be reimbursed for actual and necessary expenses.

(5) Appointed members shall annually elect from their number, a chairman, vice-chairman, and secretary.

(6) The commission shall meet at least once every three (3) months and at other times at the call of the chairman or the request of a majority of the appointed members.

History: En. Sec. 2, Ch. 303, L. 1969.

Compiler's Notes

This act became effective July 1, 1969.

69-6203. Duties of commission — department authorized to accept gifts—enter into contracts—acquire and dispose of property. (1) The commission shall:

(a) plan, promote, and assist in the support of alcohol and drug dependence prevention, treatment, and control programs;

(b) conduct, sponsor, and support research, investigations and studies, including evaluation, of all phases of alcohol and drug dependence;

(c) assist in the development of educational and training programs relative to alcohol and drug dependence, and carry on programs to assist the public, and technical and professional groups, in becoming fully informed about alcohol and drug dependence;

(d) promote, develop, and assist, financially and otherwise, alcohol and drug dependence programs administered by other state agencies,

local government agencies, and private nonprofit organizations and agencies;

(e) encourage and promote effective use of facilities, resources, and funds in the planning and conduct of programs and activities for prevention, treatment, and control of alcohol and drug dependence and, in this respect, co-operate with and utilize to the maximum possible extent the resources and services of federal, state, and local agencies.

(2) To carry out the purposes of this act, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property necessary.

History: En. Sec. 3, Ch. 303, L. 1969.

69-6204. Receipt of financial assistance authorized—co-operation with other agencies and organizations—grants to other agencies and organizations. The department may apply for and receive grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of alcohol and drug dependence, or related social problems, under laws and rules of the United States, any other state, or any private organization. The department may co-operate with any other government agency or private organization in programs on alcohol and drug dependence related social problems. In carrying out co-operative programs, the department may make grants of financial assistance to government agencies and private organizations under terms and conditions agreed upon.

History: En. Sec. 4, Ch. 303, L. 1969.

69-6205. Department to administer act. The department shall administer the provisions of this act.

History: En. Sec. 5, Ch. 303, L. 1969.

69-6206. State and local government to co-operate with department—not subject to its control. All agencies of state government, local government, and all state and local government employees shall, upon request, co-operate with the department in its activities under this act, but nothing in the act shall be construed to give the department control over any state or local agency or employee, unless otherwise provided by law.

History: En. Sec. 6, Ch. 303, L. 1969.

69-6207. Deposit of funds from federal or private sources with state treasurer. Funds available to the department from federal or private sources for use in alcohol and drug dependence prevention, treatment, and control programs, shall be deposited with the state treasurer to the account of the department in the federal and private revenue fund.

History: En. Sec. 7, Ch. 303, L. 1969.

Separability Clause

Section 8 of Ch. 303, Laws 1969 read

“It is the intent of the legislative assembly that if part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act

is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 63—INFORMATION AVAILABLE TO IN-HOSPITAL MEDICAL STAFF COMMITTEES

- Section 69-6301. Information relating to treatment of hospital patients made available to committees—information and committee proceedings and reports confidential and privileged.
- 69-6302. Restrictions on use or publication of information—identity of patient not to be disclosed.
- 69-6303. Data confidential—inadmissible in judicial proceedings—admissibility of hospital records unaffected.
- 69-6304. Data defined.

69-6301. Information relating to treatment of hospital patients made available to committees—information and committee proceedings and reports confidential and privileged. It is in the interest of public health and patient medical care that in-hospital medical staff committees have access to the records, information, and other data relating to the condition and treatment of patients in such hospital, to study and evaluate for the purpose of evaluating matters relating to the care and treatment of such patients for research purposes and for the purpose of reducing morbidity or mortality and obtaining statistics and information relating to the prevention and treatment of diseases, illnesses and injuries. To carry out such purposes, any hospital, its agents and employees may provide medical records, information or other data relating to the condition and treatment of any patient in said hospital to any in-hospital medical staff committee. All such records, data and information shall be confidential and privileged to said committee and the members thereof, as though such hospital patients were the patients of the members of such committee. All proceedings and in-hospital records and reports of such medical staff committees shall be confidential and privileged.

History: En. Sec. 1, Ch. 104, L. 1969.

Title of Act

An act providing that it is in the interest of public health that in-hospital medical staff committees have access to information relating to treatment of patients to evaluate the care and treatment for research purposes and to reduce morbidity or mortality and to obtain statistics; providing that employees of hospitals may furnish such information to the in-hospital medical staff committees; and that such information shall be confidential and privileged, and that all proceedings of such committees shall be confidential and privileged; that in-hospital staff committees shall publish information only for pur-

poses of evaluating medical care and treatment or for statistical purposes; that committees nor any of members of committees shall not disclose the identity of any patients whose records have been studied in any report or publication of findings or conclusions of committees, and that the committees and their employees shall protect the identity of patients whose conditions are studied by the committees; that all data shall be confidential and not admissible into evidence in any judicial proceeding, but that the act shall not affect the admissibility in evidence of records dealing with a patient's hospital care and treatment; defining data for the purposes of this act; and providing an effective date.

69-6302. Restrictions on use or publication of information—identity of patient not to be disclosed. Such in-hospital medical staff committees shall use or publish information from such material only for the

purpose of evaluating matters of medical care, therapy and treatment for research and statistical purposes. Neither such in-hospital medical staff committee nor the members, agents or employees thereof shall disclose the name or identity of any patient whose records have been studied in any report or publication of findings and conclusions of such committee, but such in-hospital medical staff committee, its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and shall not disclose or reveal the name of any such in-hospital patient.

History: En. Sec. 2, Ch. 104, L. 1969.

69-6303. Data confidential—inadmissible in judicial proceedings—admissibility of hospital records unaffected. All data shall be confidential and shall not be admissible in evidence in any judicial proceeding, but this section shall not affect the admissibility in evidence of records dealing with the patient's hospital care and treatment.

History: En. Sec. 3, Ch. 104, L. 1969.

69-6304. Data defined. As used in this act, data means written reports, notes or records of tissue committees or other medical staff committees in connection with the professional training, supervision or discipline of the medical staff of hospitals.

History: En. Sec. 4, Ch. 104, L. 1969. vided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

Effective Date

Section 5 of Ch. 104, Laws 1969 pro-

CHAPTER 64—VOLUNTARY STERILIZATION—STATE BOARD OF EUGENICS

- Section 69-6401. Purpose of act—persons to whom applicable.
- 69-6402. State board of eugenics—composition.
- 69-6403. Application for sterilization—hearing—showing required of applicant—designation of surgeon—written consent.
- 69-6404. Findings prerequisite to approval—certificate.
- 69-6405. No civil or criminal liability arises from sterilization—exception.
- 69-6406. Certificate that applicant does not possess capacity for voluntary consent to sterilization—person disregarding certificate guilty of misdemeanor and civilly liable—exception.

69-6401. Purpose of act—persons to whom applicable. The purpose of the act is to provide a method through proper hearing whereby certain persons whose sterilization would benefit themselves and the state may voluntarily consent to such sterilization under adequate safeguards protecting them against involuntary or unnecessary sterilization.

The persons to whom this act is applicable are those who, under appropriate standards, would be diagnosed as capable of consent to sterilization but whose capacity to consent has been questioned by a licensed physician, and who, if they should procreate offspring, might be expected either,

- (1) to transmit mental deficiencies to such offspring, or

(2) be unable to adequately care for or rear such offspring without the likelihood of adverse effects on such offspring caused by such environment.

Further, the group to which this act applies are those who have the capacity to appreciate and understand the nature of the medical treatment they are to undergo and the consequences thereof and to consent voluntarily to such treatment.

History: En. Sec. 1, Ch. 332, L. 1969.

Title of Act

An act providing for the voluntary sterilization in certain cases; creating a

state board of eugenics to administer the act; setting forth the powers and duties of such board; setting standard for the application of the act.

69-6402. State board of eugenics—composition. To carry out the purposes of this act, there is hereby created and established for Montana a state board of eugenics which shall consist of the following:

(1) Two (2) physicians licensed to practice medicine and surgery in the state of Montana to be appointed by the governor after considering the recommendation of the Montana medical association, the first such physician appointments to be for a term of two (2) and three (3) years respectively, and thereafter each such physician appointment to be for a term of three (3) years;

(2) One (1) lawyer licensed to practice law in the state of Montana to be appointed by the governor for a term of three (3) years after considering the recommendation of the Montana bar association;

(3) Three (3) lay members and a psychologist to be appointed by the governor, the first such lay member appointees shall be for a term of one (1), two (2), and three (3) years respectively and thereafter each such lay member appointee to be for a term of three (3) years; the psychologist appointee shall be for a term of three (3) years;

(4) The director of the department of institutions who shall be an ex officio member of the board and shall act as its secretary and the keeper of its books and records.

History: En. Sec. 2, Ch. 332, L. 1969.

69-6403. Application for sterilization—hearing—showing required of applicant—designation of surgeon—written consent. It shall be the duty of the state board of eugenics to receive applications by or on behalf of persons covered by this act to be sterilized. Upon receipt of such application, which shall be in any form calculated to apprise the board of the desire of the applicant to be sterilized, the board shall conduct a hearing at which the applicant must be present in person for examination by the board and evidence must be presented to establish:

(1) Whether the applicant is one of the group covered by this act;

(2) Whether it would be in the best interest of the applicant and the state for the applicant to be sterilized;

(3) Whether evidence by a qualified clinical geneticist or by someone recognized by said board of eugenics as having expertise in clinical genetics indicates that sterilization is desirable and beneficial to the applicant;

(4) Whether the applicant, whether or not a minor, is capable of understanding and does understand the nature and consequences of the medical treatment he or she will undergo and with such understanding voluntarily consents thereto;

(5) Whether such medical treatment can be carried out without unreasonable risk to the life and health of the applicant;

(6) The method and manner in which such sterilization is to be accomplished.

At such hearing the applicant shall designate the person to perform such sterilization who may be any physician and surgeon licensed to practice medicine in the state of Montana and further the applicant at such hearing shall sign a written voluntary consent to such sterilization in the form to be provided by the board.

History: En. Sec. 3, Ch. 332, L. 1969.

69-6404. Findings prerequisite to approval—certificate. If, after the hearing, the board shall find:

(1) That the applicant is one of the group covered by this act;

(2) That it would be in the best interest of the applicant and the state that the applicant be sterilized;

(3) That the applicant, whether or not a minor, is capable of understanding and does understand the nature and consequences of the medical treatment he or she will undergo and with such understanding voluntarily consents in writing thereto;

(4) That such medical treatment can be carried out without unreasonable risk to the life and health of the applicant;

(5) That the method and manner in which such sterilization is to be accomplished is by such procedures and under such conditions as are medically approved according to the standards for such procedures in the state of Montana;

(6) That the person designated to perform such sterilization is one qualified under this act to perform the same;

(7) That the applicant has in writing voluntarily consented to such medical treatment;

(8) That the parents or guardian if any exist have given written consent to the sterilization.

It shall make a certificate reciting such findings and signed by all members of the board. The original of such certificate shall be sent to the physician designated by the applicant to perform the medical treatment; one copy thereof shall be sent to the applicant or his or her parent, guardian or custodian and one copy to remain in the permanent files of the board. Upon receipt of the certificate the physician designated to perform the medical treatment may proceed with such medical treatment in accordance with the certificate. Arrangements for such medical treatment shall be made between the physician designated in the certificate and the applicant or his or her parent, guardian or custodian.

History: En. Sec. 4, Ch. 332, L. 1969.

69-6405. No civil or criminal liability arises from sterilization—exception. Neither the members of the state board of eugenics nor any physician and surgeon or assistant concerned nor any other person participating in the execution of the provisions of this act in conformity with the board's certificate shall be thereafter liable either civilly or criminally to anyone for having performed or authorizing the performance of such sterilization; provided, that such physician or surgeon or assistant concerned with nevertheless be liable for any damage caused by the negligent performance of such sterilization in accordance with the general law of the state of Montana covering such negligence.

History: En. Sec. 5, Ch. 332, L. 1969.

69-6406. Certificate that applicant does not possess capacity for voluntary consent to sterilization—person disregarding certificate guilty of misdemeanor and civilly liable—exception. If, upon such hearing, the board shall find that the applicant does not possess the capacity for voluntary consent to sterilization, as set forth in section 3 [69-6403] and section 4 [69-6404] of this act, the board shall make a certificate setting forth such finding, the original of which shall be sent to the physician designated by the applicant to perform such medical treatment; one copy shall be sent to the applicant or his or her parent, guardian or custodian, and one copy to remain in the permanent files of the board and thereafter it shall be unlawful, and punishable as a misdemeanor, for any person to perform or assist in the performance of a sterilization of the applicant or to produce or assist directly or indirectly in the procurement of such sterilization on such applicant and further, any such person shall be civilly liable for damages for the performance or the procuring directly or indirectly of the performance of eugenical sterilization upon such applicant. However, nothing in this act shall be deemed to prohibit a physician, at the request of the applicant, his or her parent, guardian or custodian, from performing a sterilization procedure on the such applicant for purely medical as distinguished from eugenical reasons.

History: En. Sec. 6, Ch. 332, L. 1969.

Effective Date

Section 7 of Ch. 332, Laws 1969 pro-

vided the act should be in effect from and after its passage and approval. Approved March 13, 1969.

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